

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2171.

740

JOHN F. WAGGAMAN, APPELLANT,

vs.

HENRY ROZIER DULANY, TRUSTEE IN BANKRUPTCY
OF THOMAS E. WAGGAMAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MAY 13, 1910.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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INDEX.

	Original.	Print
Caption	<i>a</i>	1
Original bill	1	1
Answer of Christine Waggaman.....	58	32
Joint and separate answer of John F. Waggaman and Alice V. Waggaman.....	59	33
Joint and several answers of Arthur T. Brice and others.....	75	41
Memorandum : Replication to various answers filed.....	77	43
Opinion of court by Justice Barnard.....	77	43
Stipulation.....	103	56
Final decree.....	109	60
Appeal noted by the Catholic University of America.....	112	62
Decree amending decree of October 26, 1909	113	62
Appeal by the Catholic University of America.....	114	63
Appeal by John F. Waggaman.....	115	63
Order for severance on appeal of John F. Waggaman.....	115	64
Memorandum : Appeal bond approved and filed	116	64
Directions to clerk for preparation of transcript of record.....	117	64
Memorandum : Time to file transcript of record in Court of Appeals extended	118	65
Clerk's certificate	119	65

In the Court of Appeals of the District of Columbia.

JOHN F. WAGGAMAN, Appellant,
vs.
HENRY ROZIER DULANY, Trustee, &c.

a Supreme Court of the District of Columbia.

In Equity. No. 25649.

HENRY ROZIER DULANY, Trustee in Bankruptcy of Thomas E.
Waggaman, Complainant,

vs.

THOMAS E. WAGGAMAN and JOHN RIDOUT, Trustees; THOMAS E. Waggaman and Christine Waggaman, His Wife; John Ridout and Frances E. Ridout, His Wife; Charles H. Merillat, Trustee in Bankruptcy of John Ridout; John F. Waggaman and Alice V. Waggaman, His Wife; Henry P. Waggaman and Charlotte Waggaman, His Wife; Samuel Waggaman and Mary T. Waggaman, His Wife; The Washington Loan and Trust Company (a corporation), Executor and Trustee under the Last Will and Testament of Benjamin K. Plain, Deceased; Sue Plain, Charlotte Plain Munn, and Susie B. Plain Martin; Clara J. Heyland, H. Gordon McCouch, William P. Gest, and Walter C. Harris, Executors and Trustees under the Last Will and Testament of Alfred D. Jessup, Deceased; William B. Hibbs, Arthur T. Brice, and William J. Flather, Trustees; E. C. de Q. Woodbury, Helen O. Paine, Eudora M. Clover, James Hoy, The Corcoran Gallery of Art (a Corporation), Emily A. Shuman, Kate M. Billings, Rebecca W. Walker, Nannie R. McComb, Leila M. Waller, Elvira L. de Johnson, Riggs & Company, The Louise Home (a Corporation), Clara V. Dorsey, Gracie K. Richards, Beatrice P. Marmion, Eliza A. Saunders, M. Callie Perry, James L. McLane, Francis M. Ramsay; William Wilkins Carr and James M. Johnston, Trustees; Louisa Wilson, Anthony F. Lucas, John G. Walker, Jeannie Turnbull, Josephine Tilton, Catherine M. Humphreys, Ellen Daingerfield, The Columbia Fire Insurance Company (a Corporation), John A. Rodgers, Britannia W. Kennon, Augustus Jay, James Gibbons, Archbishop of Baltimore; Anne C. Phillips, Daniel B. Clark, John W. Pilling, and Eugene Ives; Charles E. Banes, Trustee; Joseph T. Byrne, Mary Helen Harrison, Nora Correll; Joseph T. Byrne and Francis P. Byrne, Executors of the Will of Patrick Byrne, Deceased; Irving Williamson and Samuel

Waggaman, Trustees; The President and Directors of Georgetown College (a Corporation), The Catholic University of America (a Corporation), Mary Anna Riley, Mattie B. Ellery, Amy M. Bernard, Edward L. Chapin, Annie E. Bowie, E. C. Humphreys, Margaret R. Stone, Elizabeth P. McPherson; Jackson H. Ralston, Trustee; George E. Hamilton, Trustee, and Edward M. Byrne, Executor of the Will of Rose Kleiber, Deceased, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1

Original Bill.

Filed January 13, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 25649.

HENRY ROZIER DULANY, Trustee in Bankruptcy of Thomas E. Waggaman, Complainant,

vs.

THOMAS E. WAGGAMAN and JOHN RIDOUT, Trustees; THOMAS E. Waggaman and Christine Waggaman, His Wife; John Ridout and Frances E. Ridout, His Wife; Charles H. Merillat, Trustee in Bankruptcy of John Ridout; John F. Waggaman and Alice V. Waggaman, His Wife; Henry P. Waggaman & Charlotte, His Wife; Samuel Waggaman and Mary T. Waggaman, His Wife; The Washington Loan and Trust Company (a Corporation), Executor and Trustee under the Last Will and Testament of Benjamin K. Plain, Deceased; Sue Plain, Charlotte Plain Munn, and Susie B. Plain Martin; Clara J. Heyland, H. Gordon McCouch, William P. Gest, and Walter C. Harris, Executors and Trustees under the Last Will and Testament of Alfred D. Jessup, Deceased; William B. Hibbs, Arthur T. Brice, and William J. Flather, Trustees; E. C. de Q. Woodbury, Eudora M. Clover, Helen O. Paine, James Hoy, The Corcoran Gallery of Art (a Corporation), Emily A. Shuman, Kate M. Billings, Rebecca W. Walker, Nannie R. McComb, Leila M. Waller, Elvira L. de Johnson, Riggs & Company, The Louise Home (a Corporation), Clara V. Dorsey, Gracie K. Richards, Beatrice P. Marmion, Eliza A. Saunders, M. Callie Perry, James L. McLane, Francis M. Ramsay; William Wilkins Carr and James M. Johnston, Trustees; Louisa Wilson, Anthony F. Lucas, John G. Walker, Jeannie Turnbull, Josephine Tilton, Catherine M. Humphreys, Ellen Daingerfield, The Columbia Fire Insurance

2

Company (a Corporation), John A. Rodgers, Britannia W. Kennon, Augustus Jay; James Gibbons, Archbishop of Baltimore; Anne C. Phillips, Daniel B. Clark, John W. Pilling, and Eugene Ives; Charles E. Banes, Trustee; Joseph T. Byrne, Mary Helen Harrison, Nora Correll; Joseph T. Byrne and Francis P. Byrne, Executors of the Will of Patrick Byrne, Deceased; Irving Williamson and Samuel Waggaman, Trustees; the President and Directors of Georgetown College (a Corporation), The Catholic University of America (a Corporation), Mary Anna Riley, Mattie B. Ellery, Amy M. Bernard, Edward L. Chapin, Annie E. Bowie, E. C. Humphreys, Margaret R. Stone, Elizabeth P. McPherson; Jackson H. Ralston, Trustee; George E. Hamilton, Trustee, and Edward M. Byrne, Executor of the Will of Rose Kleiber, Deceased, Defendants.

To the Supreme Court of the District of Columbia, holding an equity court:

The complainant brings this bill of complaint against the above-named defendants, and thereupon avers and shows:

1. That he is a citizen of the United States, commorant in the District of Columbia, and brings this suit as trustee in bankruptcy of Thomas E. Waggaman.

2. That defendants Thomas E. Waggaman and John Ridout are residents of the District of Columbia, and are sued in their own right and as trustees, as hereinafter shown; defendant Christine Waggaman is the wife of said Thomas E. Waggaman, and is sued as such, and defendant Frances E. Ridout is the wife of said John Ridout, and is sued as such.

3. That defendant Charles H. Marillat is a resident of the said District, and is sued as trustee in bankruptcy of said John Ridout, as hereinafter shown.

4. That defendants John F. Waggaman, Henry P. Waggaman, and Samuel Waggaman are residents of the said District, and are sued in their own right, the said Samuel Waggaman being also sued as trustee, as hereinafter shown; defendant Alice V. Waggaman is the wife of said John F. Waggaman, and is sued as such; defendant Charlotte Waggaman is the wife of said Henry P. Waggaman, and is sued as such, and defendant Mary T. Waggaman is the wife of said Samuel Waggaman, and is sued as such.

5. That defendant The Washington Loan and Trust Company is a body corporate under the laws of the United States, domiciled in the District of Columbia, and is sued as executor and trustee under the last will and testament of Benjamin K. Plain, late of said District, deceased.

6. That defendants, Sue Plain, Charlotte Plain Munn, Susie B. Plain Martin, William B. Hibbs, E. C. de Q. Woodbury, Eudora M. Clover, Helen O. Paine, James Hoy, Rebecca W. Walker, Nannie R. McComb, Leila M. Waller, Beatrice P. Marmion, Eliza A. Saunders, M. Callie Perry, Elvira L. de Johnson, Gracie K. Richards, Francis M. Ramsay, Louisa Wilson, Anthony F. Lucas, John G. Walker, Jeannie Turnbull, Josephine Tilton, Catherine M. Hum-

phreys, Ellen Daingerfield, John A. Rodgers, Britannia W. Kennon, Daniel B. Clark, John W. Pilling, Eugene Ives, Joseph T. Byrne, Mary Helen Harrison, Nora Correll, Mary Anna Riley, Mattie B. Ellery, Amy M. Bernard, Edward L. Chapin, Margaret R. Stone, and Elizabeth P. McPherson are all residents of the said

4 District (except said Eugene Ives, who resides in the State of California), and are all sued in their own right.

7. That defendant Augustus Jay resides in the city of Newport, State of Rhode Island; defendant Emily A. Shuman at 121 North Eighteenth street, in the city of Philadelphia; defendant Kate M. Billings at 32 East Thirty-first street, in the City of New York; defendant Clara V. Dorsey in the town of Woodstock, State of Virginia; defendant James L. McLane in the city of Baltimore, State of Maryland; defendant Annie E. Bowie in the county of Prince George, State of Maryland; defendant James Gibbons, Cardinal and Archbishop of Baltimore, and E. C. Humphreys in the city of Baltimore, State of Maryland. All of the persons in this paragraph mentioned are sued in their own right.

8. That defendant Clara J. Heyland resides in the city of Rome, and defendants H. Gordon McCouch, William P. Gest, and Walter C. Harris in the said city of Philadelphia. All of the persons in this paragraph mentioned are sued as executors and trustees under the last will and testament of Alfred D. Jessup, late of said City of Philadelphia, deceased.

9. That defendants Arthur T. Brice, William J. Flather, Charles E. Banes, Irving Williamson, William Wilkins Carr, James M. Johnston, Jackson H. Ralston, and George E. Hamilton are all residents of the said District, and are sued as trustees, as hereinafter shown.

10. That defendants Joseph T. Byrne and Francis P. Byrne are residents of said District, and are sued as executors of the will of Patrick Byrne, deceased.

11. That defendants the Columbia Fire Insurance Company, the Corcoran Gallery of Art, the Louise Home, the Catholic
5 University of America, and the President and Directors of Georgetown College are corporations domiciled and doing business in said District, and are sued in their own right.

12. That defendants Riggs & Company are a firm or partnership late doing business in said District, but now in liquidation, and are sued in their own right. The names of the persons constituting said firm are to this complainant unknown.

13. That defendant Edward M. Byrne is a resident of said District, and is sued as the executor of the last will of Rose Kleiber, late of said District, deceased.

14. That heretofore, to wit, in the months of January, February, and March A. D. 1887, one Fannie A. Moore (unmarried) acquired title in fee simple absolute of record to the following-described real estate in the District of Columbia: By deed from one Ezra W. Clark and wife, duly recorded among the land records of said District on the 17th day of January, A. D. 1887, in Liber No. 1231 at folio 68 et seq., all that certain piece or parcel of land known and

designated as part of "Woodley," beginning for the same at a marked double white oak, and running thence south $11\frac{1}{2}^{\circ}$ east 915 feet to a stone on the county (Woodley Lane) road, and thence with the county road north $41\frac{1}{2}^{\circ}$ west $213\frac{3}{4}$ feet; thence north $30\frac{1}{2}^{\circ}$ west 87 feet; thence north 15° west 47 feet; thence north 5° west 65 feet; thence north 4° east 347 feet; thence north 6° west $283\frac{1}{2}$ feet; thence south 59° east 53 feet to gate post; thence in a straight line 41 feet to the beginning, containing 1.76 acres being a portion

of that land conveyed to Ezra W. Clark by Philander A. Bowen and wife by deed dated September 1, 1873, recorded in Liber 729, folio 349; and by deed from Clara J. Heyland and others, duly recorded among the said land records on the 7th day of February, A. D. 1887, in Liber No. 1225, folio 330 et seq. all those certain pieces or parcels of land known and designated as lots numbered 3 to 13, inclusive, and 28, 29 30, and 31, in James L. Kervand's subdivision of part of a tract of land called "Pretty Prospect," afterwards known as "Woodley Park," as per plat recorded in Liber Governor Shepherd, folio 17, of the records of the office of the surveyor of the District of Columbia; also part of said tract of land called "Woodley," described as follows, viz: Beginning at the end of the fourth line of the original tract where the beech tree is called for, thence (by magnetic bearing as of September, 1869) with the division line of the part sold to Lorenzo Thomas north 15° west 73.21 perches to the middle of Woodley road; thence with the middle of said road south $87\frac{1}{2}^{\circ}$ east 20 perches; thence south 83° east 40 perches; thence south $66\frac{1}{2}^{\circ}$ east 7 perches; thence south 45° east 10 perches; thence south 9 perches; thence south 65° east 18 perches; leaving said road; thence south 8° west 42 perches to the middle of said road; thence south 40° east 10 perches; thence south $51\frac{1}{2}^{\circ}$ east 31.75 perches to the west side of Rock Creek; thence with the west side of Rock Creek south $42\frac{1}{2}^{\circ}$ west 11 perches; thence south $22\frac{1}{2}^{\circ}$ west 10 perches; thence south 24° west 16.25 perches; thence south 65° west 10 perches; thence west 7 perches thence north $49\frac{1}{2}^{\circ}$ west 8 perches; thence north 67° west 12 perches to seventh line of said original tract called

"Woodley;" thence with said line reversed north $25\frac{1}{4}^{\circ}$ west 29 perches to a poplar tree; thence north $34\frac{1}{4}^{\circ}$ west 24 perches to a white-oak tree; thence north $56\frac{1}{4}^{\circ}$ west 24 perches to said beech tree and beginning, being all the land acquired by one Alfred D. Jessup from one Isobel Langran by deed dated May 3, 1875, and recorded in Liber 782, folio 485, and by two deeds from Louis Clephane, trustee, dated July 20, 1875, and November 17, 1876, recorded in Liber 793, folio 167, and Liber 838, folio 88, respectively of said land records; and by deed from one Benjamin H. Warder and wife, duly recorded among said land records on the 7th day of March, A. D. 1887, in liber No. 1246, at folio 36, all that certain piece or parcel of land known and designated as lot numbered one (1), in "Kervand and others' subdivision of 'Woodley,'" as per plat recorded in Liber Governor Shepherd 1, folio 17, of the records of the office of the surveyor of the District of Columbia.

15. That thereafter, to wit, on the 24th day of June, A. D. 1887, the said Fannie A. Moore conveyed the land so as aforesaid conveyed to her by Clara J. Heyland and others, by deed duly recorded as aforesaid in Liber No. 1225, at folio 330 et seq., to defendants Irving Williamson and Samuel Waggaman, their heirs and assigns, to secure one William M. Hodges thirty-five thousand dollars (\$35,000), represented by her forty promissory notes of even dates, ten for \$500 each and thirty for \$1,000 each, and all payable three years after date, with interest at 6 per centum per annum, the said deed of trust being duly recorded among said land records in Liber 1268, at folio 138, to which reference is hereby made for greater certainty as to the terms and provisions thereof.

8 Thereafter, by separate deeds of release, the said Williamson and Waggaman, as trustees, released all of the land so conveyed to them in trust except a portion thereof lying north of Cahedral avenue and known as "Thomas E. Waggaman and John Ridout, trustees, addition to the city of Washington," a subdivision hereinafter more particularly described.

And complainant is informed and believed and so charges that the said forty (40) notes so as aforesaid made and signed were by said Fannie A. Moore, the payee thereof, indorsed and transferred to divers persons, whose names are set forth and shown in a certain equity cause pending in this honorable court, and numbered on the clerk's dockets 24927, to which more specific reference is hereinafter made, and as are also shown in and by the papers and books of account of said Thomas E. Waggaman now in the possession of this complainant, all of which present holders are made parties defendant hereto.

16. That the said Fannie A. Moore, by deed dated the 14th day of July, A. D. 1887, and duly recorded among said land records in Liber No. 1269, at folio 324 et seq., conveyed all of the real estate so as aforesaid conveyed to her by the three several deeds recorded as aforesaid among said land records in Liber No. 1246, at folio 36; in Liber No. 1225, at folio 330, and in Liber No. 1231, at folio 68, to defendants Thomas E. Waggaman and John Ridout, their heirs and assigns, in and upon the following trusts:

(a) To hold said property and make such subdivision or subdivisions thereof as in their discretion might seem best.

9 (b) To sell said property or any part thereof, by subdivision or entireties, in their discretion, for such price and upon such terms as they might think best, and to convey the same in fee-simple or for any less estate, discharged of all accountability on the part of the purchaser, or of any one dealing with said trustees, to see to or account for the application of the purchase money or other money paid said trustees, who are to act in accordance with their judgment and discretion.

(c) To dispose of the proceeds of any sale or sales in accordance with a written agreement signed by the three parties interested in said property, bearing date the said 14th day of July, 1887, and a copy delivered to each, it being provided, nevertheless, that no purchaser or other person dealing with or buying from said trustees

should be in any way chargeable with any duty in respect of said agreement, but should be absolutely discharged from any liability or responsibility in connection therewith.

(d) To make sales of said property at public or private sale, in their discretion.

All of which will more fully and at large appear on reference had to a copy of said deed herewith filed, marked "Exhibit H. R. D. No. 1," which it is prayed may be read at the hearing of this cause and taken and considered a part hereof, as is also prayed in respect of all other papers filed as exhibits hereto.

17. That under the said agreement so referred to in the last-mentioned deed from Fannie A. Moore the equitable owners of the real estate conveyed by said deed were defendants Thomas E. Waggaman, John F. Waggaman, and Henry P. Waggaman, and their respective interests, in and to the several parcels or tracts of land aforesaid were as follows:

In the tract known as "Woodley," described in deed recorded in Liber No. 1225, folio 330 et seq., of said land records, Thomas E. Waggaman, one undivided fourth; John F. Waggaman, one undivided half, and Henry P. Waggaman, one undivided fourth.

In the parcel known as "Clarke tract," described in deed recorded in Liber 1231, folio 68, of said land records, Thomas E. Waggaman, one undivided fourth; John F. Waggaman, one undivided half, and Henry P. Waggaman, one undivided fourth.

In the parcel known as "Warder tract," described in Liber No. 1246, folio 36, of said land records, Thomas E. Waggaman, one undivided half; John F. Waggaman, one undivided fourth, and Henry P. Waggaman, one undivided fourth.

The said agreement further provided:

(1) That said trustees, Thomas E. Waggaman and John Ridout, might deduct from the gross proceeds of all sales made a commission of one-half of one per cent for their services.

(2) That said Thomas E. Waggaman and John F. Waggaman should have the exclusive management of said property in respect to the improvement thereof until such improvements were completed in the same manner as the property on the south side of the road was improved, and also of time, price, and terms of sale of any of said property for the period of five years from the date of the agreement.

11 (3) That any of said parties to said agreement might sell or pledge his interest in said property, or enter into any contract in respect thereof; but that no such pledge, sale or contract should in anywise affect the stipulations of said agreement with regard to the management of the property or with the powers and duties of the trustees as set forth and contained in said deed in trust.

(4) That said trustees might retain out of the proceeds of sale or sales an amount sufficient to secure and make safe the incumbrances on said property, in their discretion, and pay any surplus to the parties in interest, as well the original parties to the agreement as

parties acquiring an interest by sale, pledge, or contract with the original parties.

(5) That if any party in interest failed to pay his share of incumbrances, interest thereon, taxes, or cost of improvements, when called upon so to do by said trustees, such share might be paid by any other party in interest, and the amount so paid bear interest at the rate of 10 per cent. per annum until paid, and the trustees should have the right to sell the share of the person so in default after ninety days.

(6) That in the event of the death of any party in interest his heirs or devisees should succeed to his rights, but without affecting the operation of the agreement or of the deed in trust.

(7) That the said trustees might offer for sale at public auction any property remaining unsold at the end of five years, and, after paying costs of sales, their commissions, and incumbrances of every kind, distribute the balance among the parties in interest.

12 (8) That any pledge or purchaser of an equitable interest should be bound by the provisions of the agreement and the deed in trust.

(9) That the existence of the agreement should in no respect impose on any one dealing with the trustees any liability to see to the application of any money paid to them.

All of which will more fully and at large appear on reference had to a copy of said agreement herewith filed, marked "Exhibit H. R. D. No. 2."

18. That on the 23d day of July A. D. 1887, the said John F. Waggaman sold an undivided one-eighth interest in said lands to one Benjamin K. Plain, then in life but since deceased, and transferred the same to said Plain by an instrument of writing of said date, under his hand and seal, a copy whereof was filed with each of said trustees; that said John F. Waggaman thereafter, to wit, on the 1st day of December, A. D. 1887, entered into a further agreement with said Plain, wherein it is recited that the existing incumbrances on said lands were \$140,000, of which his, said John F. Waggaman's share was about \$70,000, and that a one-eighth interest in said lands had been sold and transferred by said John F. Waggaman, to said Plain, in addition to the one-eighth interest so as aforesaid sold and transferred in July, 1887, with the privilege to said Waggaman of repurchasing a one-sixteenth interest within twelve months from said first day of December, A. D. 1887. Notice of said agreement was filed with each of said trustees, Thomas E. Waggaman and John Ridout.

On the 24th day of August, A. D. 1888, by a further agreement in writing, the said John F. Waggaman relinquished to said
13 Plain the privilege of purchasing a one-sixteenth interest in said lands reserved in their said agreement of date December 1, 1887. A copy of said relinquishment was filed with said trustees.

On the 13th day of September, 1888, the said Henry P. Waggaman sold to said Plain an undivided one-sixteenth interest in said lands and transferred the same by an instrument of writing of that

date under his hand and seal, notice whereof was given to said trustees.

That on the 10th day of July, A. D. 1889, by an instrument of writing, under his hand and seal, and for the recited consideration of \$175,000, the said Benjamin K. Plain transferred and assigned all his interest in said land designated as a "tract of land known as and called Woodley", and being an undivided five-sixteenths interest, unto said Henry P. Waggaman, notice whereof was given to said trustees.

That on said last-mentioned day the said Henry P. Waggaman, by an instrument in writing under his hand and seal, reciting the last-mentioned assignment and the payment of \$10,000 in cash on account of the said agreed price, charged and pledged all of his interest in said lands, howsoever acquired and in whosoever name the same might stand, to secure his four certain promissory notes bearing date the said 10th day of July, 1889, given for the deferred payments of said purchase price, amounting to \$165,000, with interest at 5 per centum per annum, and payable as follows:

One note on or before two years after date.....	\$40,000
One note on or before three years after date.....	42,000
One note on or before four years after date.....	42,000
One note on or before five years after date.....	41,000

14 Notice of said charge and pledge was served on each of said trustees and the said Thomas E. Waggaman assented thereto, subject nevertheless to all advances of money theretofore made by him to said Henry P. Waggaman and all advances he might thereafter make for interest on original encumbrances and taxes on the security of his, said Henry P. Waggaman's three-sixteenths interest theretofore assigned to him, said Thomas E. Waggaman, and by a separate instrument in writing, of all of which the said Plain had notice, as this complainant is informed, the said Thomas E. Waggaman declared that his said relinquishment to the said Plain's pledge should in no wise affect his, said Thomas E. Waggaman's right to receive all of said Henry P. Waggaman's share of any proceeds of sale or sales under the order theretofore filed with the trustees and hereinafter more fully set forth.

All of which will more fully and at large appear on reference had to copies of said transfers, agreements, and pledges, herewith filed, marked "Exhibit H. R. D. No. 3."

19. That on the 12th day of October, A. D. 1887, the said Henry P. Waggaman, his wife joining with him, by an instrument in writing under their hands and seals, transferred to said John Ridout, his heirs and assigns, an undivided one four hundred and fortieth (1/440) interest in said lands for the stated consideration of \$1,016.36. Notice of said transfer was given to each of said trustees.

All of which will more fully appear on reference had to a copy of said transfer, herewith filed, marked "Exhibit H. R. D. No. 4."

20. That on the 13th day of October, 1888, the said Henry
15 P. Waggaman expressly pledged all of his interest in said
lands to said Thomas E. Waggaman to secure the repayment
of a loan of \$3,500, made by said Thomas E. to the said Henry P.,
and evidenced by the latter's note to the order of said Thomas E.,
with interest from date at the rate of 6 per centum per annum.
Notice of said pledge was given to each of said trustees, the said John
Ridout and Thomas E. Waggaman.

That on the 31st day of May, 1888, the said John F. Waggaman
and Henry P. Waggaman expressly pledged all their and each of
their interests in said lands designated as Woodley to secure a loan
of \$25,000, evidenced by the promissory note of said John F. Waggaman
and Henry P. Waggaman, bearing date the 31st day of May,
1888, and payable on demand to the said Thomas E. Waggaman,
with interest at 6 per centum per annum until paid. Notice of said
pledge was given to each of said trustees.

And by an order of the 25th day of July, 1888, the said John F.
Waggaman and Henry P. Waggaman authorized the said Thomas
E. Waggaman to retain their share of all proceeds of sale of said
land on account of endorsements of their notes made by him at their
request.

That on the 20th day of November, 1888, the said Henry P.
Waggaman assigned all his right, title, interest and estate in said
lands designated as "Woodley Park" and all of his right and title
to the proceeds of sale of said property (said interest on said date
being an undivided three-sixteenths interest, less one four hundred
and fortieth interest theretofore transferred to John Ridout on the
12th day of October, 1887) to said Thomas E. Waggaman, his heirs

and assigns, the purpose and intention of said assignment, as
16 therein recited, being to divest himself, the said Henry P.
Waggaman, of all interest in said property and vest the same
in said Thomas E. Waggaman. Notice of said assignment was given
to each of said trustees.

That on the 11th day of July, 1889, the said Henry P. Wagga-
man assigned all the right, title, interest and estate in said lands
acquired by him by assignment from Benjamin K. Plain, dated the
10th day of July, 1889 (hereinbefore referred to) and all his title
and interest in and to the proceeds of sale of all or any part of said
property to said Thomas E. Waggaman, his heirs and assigns.
Notice of said assignment was given to each of said trustees.

All of which will more fully and at large appear on reference had
to copies of said pledges and assignments, herewith filed, marked
"Exhibit H. R. D. No. 5."

21. That on the 30th day of November, 1888, the said Henry P.
Waggaman conveyed an undivided one-eighth interest in said lands,
except lots 3, 4 and 5, in block 9; lots 4 and 6, in block 10; lot 1,
in block 11, and lot 1, in block 13, and the streets and avenues in
Waggaman and Ridout, Trustees' Addition to the City of Wash-
ington, to said Thomas E. Waggaman, in trust additionally to se-
cure the estate of one Alfred D. Jessup as the purchaser of certain
notes for \$25,000 secured by deed of trust on certain lands in the

county of Prince George, State of Maryland, known as "Highlands," upon which said John F. Waggaman is endorser, provided that the security upon said Highlands property should be first exhausted and applied to the payment of said notes before recourse could be
17 had to the said interest in "Woodley," and then only for the deficiency, if any. Notice of said assignment was given to said trustees, and the consent thereto of said Thomas E. Waggaman, John F. Waggaman, and John Ridout was indicated by an instrument in writing under their hands and seals, bearing date the 17th day of November, A. D. 1888. The said conveyance or deed of trust was also recorded among said land records in Liber 2855, at folio 1 et seq. on the 10th day of October, 1904.

All of which will more fully and at large appear on reference had to copies of said assignment and consent, herewith filed, marked "Exhibit H. R. D. No. 6."

That the estate of said Alfred D. Jessup is now represented by defendants Clara J. Heyland, H. Gordon McCouch, William P. Gest, and Walter C. Harris, as executors and trustees, duly qualified as such under his last will and testament.

22. That on the 12th day of September, 1889, an agreement was entered into between said Thomas E. Waggaman, Henry P. Waggaman, and Samuel Waggaman, that after repayment of all encumbrances on the five-sixteenths undivided interest in said lands so purchased from said Benjamin K. Plain, and the repayment to said Thomas E. Waggaman of \$10,225, with interest, advanced by him to make the cash payment to said Plain, and evidenced by the note of one White, endorsed by said Henry P. Waggaman, and the deductions of any other amounts advanced on account of said interest, the profits of said purchase should be divided as follows: To said Thomas E. Waggaman, two-sixteenths; to said Henry P. Waggaman two-sixteenths; to said Samuel Waggaman, one-sixteenth.

18 All of which will more fully and at large appear on reference had to a copy of said agreement, herewith filed, marked "Exhibit H. R. D. No. 7."

23. That on the — day of — the said Henry P. Waggaman, by an instrument in writing under his hand and seal, declared that he was indebted unto defendant William B. Hibbs in the sum of \$5,073, evidenced by his note at ninety days, and authorized and directed the said Thomas E. Waggaman and John Ridout trustees, to apply the first proceeds of the said Woodley Park property to the payment of the principal and interest of said note. The said order or instrument in writing was without date, but a copy of it was filed with said Ridout on the 30th day of December, 1892.

All of which will more fully and at large appear on reference had to a copy of said instrument in writing, herewith filed and marked "Exhibit H. R. D. No. 8."

24. That in and by the said agreement referred to in said deed in trust from Fannie A. Moore of date July 14, 1887, and a copy whereof is filed herewith as "Exhibit H. R. D. No. 2," it is provided, inter alia, that the said Thomas E. Waggaman and John F. Waggaman "shall have the exclusive management of said property in re-

spect to the improvement thereof, until such improvements are completed in the same manner as the property on the south side of the road is improved," meaning thereby the old "Woodley road" as then laid out through said lands. At the date of said agreement the lands on the north side of said road were uneven and hilly, and in the grading of these lands and the laying out, grading, and improvement of Connecticut avenue, Cathedral avenue, and other streets dedicated to public use in said subdivisions large sums of money were expended, all or most of which were provided by the said Thomas E. Waggaman by means of loans secured on the property and hereinafter more specifically referred to and by advances from his own funds, the other parties in interest not contributing their share of either the interest on said loans, the taxes on the property, or the cost of said improvements. For the purpose of ascertaining what amounts of money were received by said Thomas E. Waggaman for and on account of said lands and what amounts were paid out by him for the purchase-money and the grading and otherwise improving said lands, taxes and insurance, legal expenses, including title examinations from time to time, commissions on purchases, and interest on encumbrances, the complainant employed expert accountants to examine the books of account, records, and papers of the said Thomas E. Waggaman in respect of said purchase and management. A copy of the summarized account made by said expert accountants so employed by complainant is herewith filed, marked "Exhibit H. R. D. No. 9."

25. And complainant is informed and believes, and, so believing, charges and avers and offers to prove, that the said summarized account is correct, and that he, as trustee in bankruptcy of said Thomas E. Waggaman, is entitled to receive from and out of the proceeds of sale of the said lands the balance of \$71,796.34 so shown to be due said Thomas E. Waggaman, with interest thereon till paid, at the rate of 10 per centum per annum, on the several advances made by him for the purposes aforesaid, and from the date of said advances, before any part of said proceeds is paid to any other holder of an equitable interest therein, or any payments out of said proceeds on account of the said four promissory notes so as aforesaid given by the said Henry P. Waggaman on the 10th day of July, 1889, to the said Benjamin K. Plain as deferred payments of the purchase-money for an undivided five-sixteenths interest in the proceeds of said land and hereinbefore referred to in paragraphs 24 of this bill.

26. That the report of said expert accountants further shows that the said Thomas E. Waggaman, before and since the signing of the said agreement entered into between himself, Henry P. Waggaman, and Samuel Waggaman, and hereinbefore referred to as "Exhibit H. R. D. No. 7," in respect of the said five-sixteenths undivided interest so purchased from said Plain, advanced from time to time large sums of money for interest on said notes so given by said Henry P. Waggaman to said Plain, the aggregate of such advances, with interest thereon calculated to the 23d day of August, A. D. 1904, being \$288,671.70, and that said Henry P. Waggaman and Samuel

Waggaman did not, nor did either of them, pay any money on account of said interest.

And complainant, on information so obtained, charges and avers and offers to prove that said account is correct, and he is advised by counsel that as trustee as aforesaid he is entitled to receive the said sum, with interest, from and out of any distribution of the sale proceeds of said lands before any part thereof is paid to the said Henry P. Waggaman or Samuel Waggaman or either of them, or to the said William B. Hibbs, as holder of the pledge from said Henry P. Waggaman, and hereinbefore referred to as "Exhibit H. R. D. No. 8."

21 27. That the said equitable interests in said lands so as aforesaid conveyed by said Fannie A. Moore on the 14th day of July, 1887, to said Thomas E. Waggaman and John Ridout, trustees, or to such of said lands as still remain vested in said trustees, are as follows, all subject, nevertheless, to the balance due said Thomas E. Waggaman for advances as set out in "Exhibit H. R. D. No. 9."

John F. Waggaman, one-fourth.

John Ridout, one four hundred and fortieth.

Thomas E. Waggaman, nine sixteenths, less one four hundred and fortieth.

Henry P. Waggaman, two-sixteenths, subject to advances by Thomas E. Waggaman.

Samuel Waggaman, one-sixteenth, subject to advances by Thomas E. Waggaman.

28. That the said Benjamin K. Plain departed this life on the 19th day of July, 1893, and by his last will and testament, duly admitted to probate and record in this honorable court at a special term thereof held for orphans' court business, devised his entire estate to defendant The Washington Loan and Trust Company on certain trusts for the benefit of his daughters, defendants Lottie C. Plain and Susie B. Plain Martin, wife of Charles C. Martin. Subsequently defendant Sue Plain, widow of said Benjamin K. Plain, was by decree of this honorable court, passed in equity cause No. 21117, adjudged to be entitled to one-third of the interest accruing on said notes of Henry P. Waggaman and one-third of the principal of said notes on the final settlement of the trust estate created by said will.

22 On the 16th day of January, 1905, the said Washington Loan and Trust Company exhibited its bill in this honorable court against this complainant and others and numbered in equity 25136, wherein it is averred, inter alia, that said trust company holds three of said notes so given by said Henry P. Waggaman to said Benjamin K. Plain—viz., the two notes for \$42,000, payable on or before three and four years respectively after date, and the note for \$41,000, payable on or before five years after date, and that a payment of \$5,000 was made on the 10th day of July, 1893, on the principal of said note for \$42,000, payable on or before three years after date.

The said bill avers that the rate of interest on said note was increased from 5 to 6 per cent. in the year 1892, and at said rate paid

down to the 10th day of January, 1904, as is also shown by the records of the said Thomas E. Waggaman.

29. That the said note for \$40,000, given, as aforesaid, by said Henry P. Waggaman to said Plain, and payable on or before two years after date, is now claimed to be held and owned by defendant The Catholic University, and interest thereon has been paid down to the 10th day of July, 1904.

30. That complainant is informed and believes, and so believing charges and avers and offers to prove, that the representatives of the estate of Alfred D. Jessup have not as yet foreclosed the deed of trust on the property in Prince George's county, Maryland, given, as hereinbefore shown, to secure the said note for \$25,000, or other-

wise exhausted the security provided by that deed of trust, and
23 are therefore not now entitled, as this complainant is advised by counsel, to claim the benefit of the additional security for the payment of said note afforded by the said deed of trust from Henry P. Waggaman to Thomas E. Waggaman on the 30th day of November, 1888, upon an undivided one-eighth interest in said lands, and hereinbefore referred to as Exhibit "H. R. D. No. 6."

31. That the complainant is informed by the defendant William B. Hibbs that no part of the note for \$5073, so, as aforesaid, given him by the said Henry P. Waggaman on or about the 30th day of December, 1892, and no interest thereon has been paid, and he, said Hibbs, claims the benefit of the pledge by the said Henry P. Waggaman for the payment of said note hereinbefore referred to as "Exhibit H. R. D. No. 8."

32. That under and by virtue of the powers in them vested by the aforementioned deed from Fannie A. Moore, dated July 14, 1887, and recorded among said land records in Liber 1269, at folio 324, the said Thomas E. Waggaman and John Ridout, trustees, on the 15th day of June, 1888, subdivided the lands by said deed conveyed into blocks 1 to 14, inclusive, to be thereafter known as "Thomas E. Waggaman and John Ridout, trustees,' addition to the city of Washington," and caused said subdivision to be recorded in the office of the surveyor of the District of Columbia, in book known as "County No. 6." at folio 133.

And on the 2d day of March the said trustees and one Cecilia M. Coughlan subdivided blocks 4 to 8 of the aforesaid subdivision into lots 31 to 101, as per plat recorded in the office of the surveyor of said District, in book known as "County No. 15." at folio 1.

24 And on the 26th day of June, 1900, the said Thomas E. Waggaman and John Ridout, trustees, subdivided such parts of blocks 2, 3, 4, 5, 6, 7 and 8, of their addition to the city of Washington (as per "County No. 6," page 133) as were not taken for the extension of Connecticut and Cathedral avenues, or for the Zoological Park, or subdivided into lots, as shown in said subdivision recorded in said "County No. 15," at folio 1, parts of blocks 5 and 7, and all of lots 31 to 54 and 68 to 91, inclusive, as in said subdivision recorded in said "County No. 15," at folio 1, and small portions of other tracts, into blocks, lots, public alleys, and public highways,

the said subdivision being recorded in said "County No. 15," at folio 7.

And on the 28th day of March, 1902, in further execution of the powers vested in them by the said deed in trust from Fannie A. Moore, and by virtue of an act of Congress approved March 1, 1901, the said Thomas E. Waggaman and John Ridout dedicated certain land to public use and subdivided block 23 of their last-described subdivision into lots 74 to 89, inclusive, as per plat recorded in the surveyor's office of said District in "County No. 14," at folio 99s.

33. That on the 3d day of September, A. D. 1898, the said Thomas E. Waggaman and John Ridout, trustees, through one Cecilia M. Coughlin, conveyed to the United States parts of blocks 22 and 29 of their subdivision, recorded in the office of said surveyor, in said book, "County No. 6," at folio 133, for public uses, and on the 10th day of July, 1890, conveyed to the District of Columbia a

25 strip of land running through said subdivision northwesterly 130 feet wide, for the prolongation and extension of Connecticut avenue, through Woodley Park, and on the 23d day of September, 1890, sold and conveyed to the United States a strip of land lying along Rock creek and containing about seven and one-half acres for the Zoological park, and by their said subdivisions recorded, as aforesaid, in the office of the surveyor of said District dedicated other portions of said lands for streets and public ways and uses. The said trustees also sold and conveyed in fee-simple to divers persons certain lots and parts of lots in one or the other of their said subdivisions, so that on the 26th day of September, 1904, the date said Thomas E. Waggaman was adjudged a bankrupt, the said trustees had and now have title to about 3,000,000 square feet of the land so conveyed to them in trust by the said Fannie A. Moore, and subject to the conditions and provisions of said deed in trust, the same being the blocks and lots following—that is to say:

In the subdivision known as Thomas E. Waggaman and John Ridout, trustees', addition to the city of Washington, as per plat recorded in the surveyor's office of said District, in Liber "County No. 6," at folio 133:

Block 1. Lying north of Cathedral avenue and not taken in the extension of said avenue.

Block 7. All of lots 23 and 24, except what was conveyed to the District of Columbia for the extension of Connecticut avenue or taken in the subdivision in "County No. 15," folio 1, in lots 92, 93, 94, 95, 98, 99, 100, and 101, and all of lots 25, 26, 27, 28, and 29, except what was taken in the extension of Connecticut avenue.

Block 9. All of lots 1, 2, 6, 7, and 8.

26 Block 10. All of lots 1, 2, 3, and 5.

Block 11. All of lots 2 and 3.

Block 12. All of lots 1 to 22 inclusive.

Block 13. All of lots 2 to 9, inclusive.

Block 14. All of lots 1, 2, 3 and 4, and all of lot 5, except such part thereof as was conveyed to the District of Columbia for the extension of Connecticut avenue.

Also the following blocks and lots in the subdivision made by said

Thomas E. Waggaman and John Ridout, trustees, as per plat recorded in the office of the surveyor of said District, in Liber "County No. 15," at folio 7:

Block 15. All of lots 1 to 63, inclusive.

Block 16. All of lots 1 to 64, inclusive.

Block 17. All of lots 2 to 22, inclusive, and the north half of lot 23.

Block 18. All of lots 1 to 19, inclusive, and lots 22 and 23.

Block 19. All of lots 1 to 35, inclusive.

Block 20. All of lots 1 to 35, inclusive.

Block 21. All of lots 1 to 21, inclusive.

Block 22. All of lots 1 to 10, inclusive.

Block 23. All of lots 61 to 71, inclusive, and lots 74 to 77, inclusive, and 79 to 89, inclusive.

Also lots numbered 96 and 97, and such parts of lots 94, 95, and 98 as are not included within the lines of lots 23 and 24, in block 8, in the said "Addition to the city of Washington."

Also a triangular piece of land, part of lots 21, and 22, block 7, of said addition, and bounded by the eastern line of Connecticut avenue, the south line of Cincinnati street, and the western line of lots 2, 3, 4 and 5 of said block 22, the last boundary line being 184.41 feet in length.

Also a narrow strip of land along the north line of Cathedral avenue and east of Connecticut avenue.

34. That on the 3d day of March, A. D. 1900, in further execution of the powers vested in them by said deed in trust from Fannie A. Moore, dated the 14th day of July, 1887, the said Thomas E. Waggaman and John Ridout, trustees, and said Cecilia M. Coughlin, made, executed and delivered to defendants Arthur T. Brice, and William J. Flather, as trustees, a certain deed of trust which recites that said trustees, Waggaman and Ridout, for the purpose of discharging the incumbrances on so much of the hereinafter-mentioned land as is vested in them, and for other purposes connected with the due execution of the trusts in them vested, have borrowed \$45,000, represented by certain notes of James B. Nicholson to the order of and endorsed by Thomas E. Waggaman, and that said Waggaman and Ridout, trustees, and said Cecilia M. Coughlin have agreed to secure the repayment of the sum so borrowed; that said Nicholson has made and passed his twenty-four notes, Nos. 1 to 24, of even date with said deed of trust and payable to the order of Thomas E. Waggaman three years after date, with interest at 5 per centum per annum until paid, payable semi-annually; that said notes were endorsed by said Thomas E. Waggaman and that the principal and interest thereof were payable at the Riggs national bank, Washington, D. C., and that said notes were severally and separately secured on the hereinafter mentioned lots as per schedule attached.

28 And for the purposes aforesaid, to wit, the securing of the payment of said notes, the said Waggaman and Ridout, trustees, and the said Coughlin conveyed to the said Brice and Flather the following-described lots, viz., lots 51 to 67, inclusive,

and lots 92 to 101, inclusive, in Thomas E. Waggaman, trustee, and others' subdivision of parts of blocks 4, 5, 6, 7, and 8, in Waggaman and Ridout, trustees', addition to the city of Washington (first-named subdivision as per plat recorded in Liber County No. 15, folio 1, of the records of the office of the surveyor of the District of Columbia), so much of said described land as is included within the exterior lines of lots 23 and 24, in block 7, in Waggaman and Ridout, trustees', addition to the city of Washington, as per plat recorded in Liber County No. 6, folio 133, of the surveyor's office records aforesaid, being owned by said Cecilia M. Coughlin, and the residue of said described land being owned by said Thomas E. Waggaman and John Ridout, trustees.

The schedule of notes attached to said deed of trust is as follows:

Nos. 1 to 9, inclusive, for \$1,800 each, secured on lots 51 to 59, inclusive.

No. 10 for \$1,500, secured on lot 60.

Nos. 11 to 16, inclusive, for \$1,800, each, secured on lots 61 to 66, inclusive.

No. 17 for \$700, secured on lot 67.

Nos. 18 and 19 for \$2,000 each, secured on lots 94 and 95.

No. 20 for \$1,800 secured on — 96.

29 No. 21 for \$2,500, secured on lot 97.

No. 22 for \$2,500, secured on lots 92 and 99.

No. 23 for \$2,500, secured on lots 93 and 98.

No. 24 for \$2,500, secured on lots 100 and 101.

And complainant is informed and believes, and so charges, that nine of said notes for \$1,800 and one for \$1,500 have been paid and canceled, and that the remainder are now held and owned as follows:

By defendant The Corcoran Gallery of Art, seven of \$1,800 each; by defendant Eudora M. Clover, one note for \$700, two notes for \$2,000 each, and four notes of \$2,500 each.

Interest on all of said notes has been paid to March 3, 1904.

By separate deeds, dated respectively June 6 and June 10, 1904, lots numbered 51 to 60 were duly released from the effect and operation of said last-mentioned deed of trust, and the notes secured thereon, aggregating \$17,700, paid and canceled.

For greater certainty as to the terms and conditions of said deed of trust reference is hereby made to the record thereof in Liber 2472, at folio 278, of said land records.

35. That on the 21st day of May, 1900, the said Thomas E. Waggaman and John Ridout, trustees, in further execution of the powers in them vested by said deed in trust dated the 14th day of July, 1887, made, executed, and delivered a certain other deed of trust and thereby conveyed to defendants Arthur T. Brice and

30 William J. Flather, their heirs and assigns, all of lots numbered 50, 85, and 86 and parts of lots 31 to 49, both inclusive; 68 to 84, both inclusive, and 87 and 88, in Thomas E. Waggaman and others, trustees', subdivision of parts of blocks 4, 5, 6, 7 and 8, in "Waggaman and Ridout, trustees', addition to the city of Washington," as said first-named subdivision is recorded

in Liber County No. 15, folio 1, of the records of the office of the surveyor of the District of Columbia, said lots and parts of lots being described in thirty-seven parcels as follows, viz:

Parcel 1. Parts of said lots 31 and 32, beginning for the same at a point on the south side of Cathedral avenue 93.43 feet northwesterly from the intersection of the west line of Connecticut avenue and running thence northwesterly along said Cathedral avenue 50 feet; thence southwesterly, at right angles to Cathedral avenue, 88.17 feet to an alley; thence easterly along said alley 51.63 feet to a point distant 75.3 feet in a line drawn at right angles to Cathedral avenue from the point of beginning, and thence northeasterly, at right angles to Cathedral avenue, 75.3 feet to the place of beginning.

Parcel 2. Parts of said lots 32 and 33, beginning for the same on the west line of Connecticut avenue at the point of intersection of the south line of Cathedral avenue and running thence northwesterly on Cathedral avenue 93.43 feet; thence southwesterly, at right angles to Cathedral avenue, 75.3 feet; thence easterly 120 feet to the place of beginning.

Parcel 3. Parts of said lots 32 and 33, beginning for the same on the west *wise* of Connecticut avenue at the point of intersection of the south line of Cathedral avenue and running thence southeasterly along Connecticut avenue 50 feet; thence southwesterly, at right angles to Connecticut avenue, 120 feet to an alley; thence northwesterly, parallel to said Connecticut avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 4. Parts of said lots 32 and 33 and 34, beginning for the same at a point in the line of Connecticut avenue distant 9.8 feet north of the southeast corner of said lot 33 and running thence southeasterly along Connecticut avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 5. Parts of said lots 34 and 35, beginning for the same at a point in the line of Connecticut avenue distant 9.8 feet north of the southeast corner of said lot 34 and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 6. Parts of said lots 35 and 36, beginning for the same at a point in the line of Connecticut avenue distant 9.8 feet north of the southeast corner of said lot 35 and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence, northeasterly at right angles to said avenue, 120 feet to the place of beginning.

Parcel 7. Parts of said lots 36 and 37, beginning for the same at a point in the line of Connecticut avenue distant

9.8 feet north of the southeast corner of said lot 36 and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 8. Parts of said lots 37 and 38, beginning for the same at a point in the line of Connecticut avenue distant 9.8 feet north of the southeast corner of said lot 37 and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 9. Parts of lots 38 and 39 beginning for the same at a point in the line of Connecticut avenue distant 9.8 feet north of the southeast corner of said lot 38 and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence, northeasterly at right angles to said avenue, 120 feet to the place of beginning.

Parcel 10. Parts of said lots 39 and 40, beginning for the same at a point in the line of Connecticut avenue distant 9.8 feet north of the southeast corner of said lot 39 and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 11. Parts of said lots 40 and 41, described as follows, viz: Beginning for the same at a point in the line of Connecticut avenue distant 9.8 feet north of the southeast corner of said lot 40, and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly at right angles to said avenue, 120 feet to the place of beginning.

Parcel 12. Parts of said lots 41 and 42 and 43, beginning for the same at a point in the line of Connecticut avenue distant 9.8 feet north of the southeast corner of said lot 41 and running thence southeasterly along said avenue 90.52 feet; thence north $80^{\circ} 34'$ west 144.52 feet to an alley; thence northwesterly, parallel to said avenue and along said alley, 9.99 feet; thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 13. Parts of said lots 44, 45 and 46, beginning for the same at a point in the line of Connecticut avenue distant 16.96 feet southerly from the northeast corner of said lot 46, and running thence northwesterly along said avenue 63.98 feet; thence north $80^{\circ} 34'$ west 63.98 feet; thence southwesterly, at right angles to said last line, 120 feet; thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 14. Parts of said lots 46 and 47, beginning for the same

34 at a point in the line of Connecticut avenue distant 16.97 feet south of the northeast corner of said lot 46, and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 15. Parts of lots 47 and 48, beginning for the same at a point in the line of Connecticut avenue distant 16.97 feet south of the northeast corner of said lot 47, and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 16. Parts of lots 48 and 49, beginning for the same at a point in the line of Connecticut avenue distant 16.97 feet south of the northeast corner of said lot 48, and running thence southeasterly along said avenue 50 feet; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence northwesterly, parallel to said avenue, 50 feet, and thence northeasterly, at right angles to said avenue, 120 feet to the place of beginning.

Parcel 17. Part of said lot 49 and all of said lot 50, beginning for the same on the west line of Connecticut avenue, at the point of intersection of the north line of Woodley road, and running thence northwesterly along said Connecticut avenue 93.11 feet to a point distant 16.97 feet south of the northeast corner of said lot 49; thence southwesterly, at right angles to said avenue, 120 feet to an alley; thence southeasterly, parallel to said avenue, 12.58 feet to the
35 north line of Woodley road, and thence along said Woodley road to the place of beginning.

Parcel 18. Part of said lot 68, beginning for the same on the west line of Connecticut avenue, at the southwest corner of said lot, and running thence with the line of said Connecticut avenue northwesterly 30 feet; thence northeasterly, at right angles to said avenue, 110 feet to an alley 15 feet wide; thence southeasterly, parallel with said avenue, to the south line of said lot, and thence along said south line westerly to the place of beginning.

Parcel 19. West part of said lot 69, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 20. West part of said lot 70, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 21. West part of said lot 71, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 22. West part of said lot 72, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 23. West part of said lot 73, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 24. West part of said lot 74, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 25. West part of said lot 75, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15 foot-wide alley in the rear.

36 Parcel 26. West part of said lot 76, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 27. West part of said lot 77, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 28. West part of said lot 78, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 29. West part of said lot 79, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 30. West part of said lot 80, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 31. West part of said lot 81, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 32. West part of said lot 82, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 33. West part of said lot 83, being the entire front of said lot on Connecticut avenue by depth of 110 feet to a 15-foot-wide alley in the rear.

Parcel 34. Part of said lot 84, beginning for the same at the southwest corner of said lot on Connecticut avenue, and running thence northwesterly along said avenue 50 feet to the northwest corner of said lot; thence northeasterly, at right angles to said avenue, 97.74 feet to Cathedral avenue; thence southeasterly along said
37 Cathedral avenue 15.74 feet to an alley 15 feet wide; thence southeasterly with said alley and parallel with Connecticut avenue 40.12 feet, and thence southwesterly, at right angles to said Connecticut avenue, 110 feet to the place of beginning.

Parcel 35. All of said lot 85.

Parcel 36. All of said lot 86.

Parcel 37. Parts of said lots 87 and 88, beginning for the same at the northeast corner of lot 86, and running thence southwesterly along the dividing line between said lots 86 and 87, 99.69 feet to the south corner of said lot 86; thence northeasterly, at right angles to Connecticut avenue, 100 feet; thence northwesterly, parallel with said Connecticut avenue, 47.45 feet to the south line of Cathedral avenue, and thence along said Cathedral avenue 48.1 feet to the place of beginning.

In trust to secure 37 notes of James B. Nicholson, aggregating \$62,600, bearing date the 21st day of May, 1900, payable three years

after date to the order of said Thomas E. Waggaman and by him endorsed, with interest at 5 per centum per annum, payable semi-annually, until paid, the said notes being solely and separately secured on said parcels numbered from 1 to 37 respectively as follows, each of said notes being secured upon the parcel of the corresponding number and hereinbefore described:

Note No. 1 for \$1,000; No. 2 for \$1,200; Nos. 3 to 11, inclusive, for \$1,800 each; No. 12 for \$2,000; No. 13 for \$2,500; Nos. 14, 15 and 16 for \$1,800 each; No. 17 for \$2,000; No. 18 for \$2,200; 38 Nos. 19 to 34, inclusive, each for \$1,600; No. 35 for \$1,200; No. 36 for \$1,800, and No. 37 for \$1,500.

And complainant is informed and believes, and so charges, that interest on all of said notes secured by said deed of trust and not since sold has been paid to May 21, 1904, and that said notes are now held and owned by defendants as follows:

By E. C. de Q. Woodbury, one note for \$1,000, one note for \$1,200, and one note for \$1,800.

By Helen O. Paine, one note for \$1,800.

By James Hoy, five of said notes for \$1,800 each and one for \$1,600.

By the Corcoran Gallery of Art, two notes for \$1,800 each and one note for \$2,000.

By Emily A. Shuman, one note for \$2,200 and one note for \$1,600.

By Rebecca W. Walker, two notes of \$1,600 each.

By Kate M. Billings, one note for \$1,600.

By Nannie R. McComb, three notes for \$1,600 each.

By Leila M. Waller, three notes of \$1,600 each.

By Elvira L. de Johnson, four notes of \$1,600 each, one note for \$1,200, one note for \$1,800, and one not for \$1,500.

And complainant further shows that since the said deed of trust was so as aforesaid executed and delivered Thomas E. Waggaman and John Ridout, as trustees as aforesaid, sold and conveyed, subject to the incumbrances thereon, lots 1, 24, and 25 and south half of lot 23, block 17, and lots 20 and 21, block 18, of the subdivision recorded in Liber "County No. 15," at folio 7, said lots 39 being included in the last above mentioned trust as parts of lots 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47, and the purchasers thereof assumed the debts secured thereon as follows: \$900 on parts of lots 38, 39, and 40, \$1,800 on parts of lots 40 and 41, \$2,000 on parts of lots 41, 42, and 43, \$2,500 on parts of lots 44, 45, and 46, and \$1,800 on parts of lots 46 and 47, leaving still due on the lots conveyed by said deed of trust and not since sold \$53,600.

And complainant further shows that he has made diligent inquiries to ascertain the name of the holder of the note for \$1,600 separately secured on said trust on lot numbered 70, but has been unable so to do, the said lot being identical with lot numbered 4 of the subdivision recorded in said "County No. 15," at folio 7.

For greater certainty as to the terms and conditions of said deed of trust reference is hereby made to the record thereof in Liber 2480, at folio 231, of the said land records.

36. That on the 25th day of June, 1901, the said Thomas E. Waggaman and John Ridout, trustees, in further execution of the powers in them vested by said deed in trust dated the 14th day of July, 1887, and for purposes connected therewith, made, executed, and delivered a certain other deed of trust, and thereby conveyed to defendants Arthur T. Brice and William J. Flather, their heirs and assigns, lots numbered one (1) to sixty-four (64), in block sixteen (16), in said Waggaman and Ridout, trustees', "subdivision in" Woodley Park, as per plat recorded in Book County No. 15, folio 7, of the records of the office of the surveyor of said District, in trust to secure nineteen notes of James B. Nicholson, aggregating \$35,000, bearing date the said 25th day of June, 1901, payable one year after date to the order of said Thomas E. Waggaman and by him endorsed, with interest at 5 per centum per annum until paid, both the principal and interest of said notes being payable at said Riggs national bank.

For greater certainty as to the terms and conditions of said deed of trust reference is hereby made to the record thereof in Liber 2580, at folio 152, of said land records.

None of the lots conveyed in and by the said deed of trust have been released from the effect and operation thereof.

And complainant is informed and believes, and therefore charges, that the interest on said notes has been paid to June 25, 1904, and that said notes are now held by defendants as follows:

By Riggs & Co., two notes for \$5,000 each and one note for \$1,000.

By Louise Home, two notes for \$5,000 each.

By Clara V. Dorsey, one note for \$1,000.

By Gracie K. Richards, three notes for \$1,000 each.

By Beatrice P. Marmion, two notes of \$1,000 each.

By Eliza A. Saunders, two notes of \$1,000 each.

By M. Callie Perry, one note of \$1,000.

By James L. McLane, one note of \$1,000.

By F. M. Ramsay, one note of \$1,000.

By William Wilkins Carr and James M. Johnson, trustees, one note for \$1,000.

By Louisa Wilson, two notes of \$1,000 each.

41 37. That on the 10th day of October, 1901, the said Thomas E. Waggaman and John Ridout, trustees, in further execution of the trusts reposed in them by said deed in trust from Fannie A. Moore, dated the 14th day of July, 1887, made, executed, and delivered a certain other deed of trust and thereby conveyed to said defendants, Arthur T. Brice and William J. Flather, their heirs and assigns, lots 1, 2, 6, 7 and 8, in block 9; lots 1, 2, 3, and 5, in block 10; lots 2 and 3, in block 11; lots 1 to 22 in block 12; lots 2 to 9, in block 13; lots, 1, 2, 3, 4, and 5, in block 14; also a lot or strip of land in or adjoining said block 14 lying west of the center line of Talapaumen avenue except the part thereof conveyed to Henderson by deed recorded in Liber 1328, folio 221, all of said lots being in Thomas E. Waggaman and John Ridout, Trustees', addition to Washington, being a subdivision of land formerly Woodley Park, as per plat recorded in Liber County

No. 6, folio 133, of the records of the office of the surveyor of the District of Columbia; lots 1 to 35, in block 20; lots 1 to 10, in block 22, in Thomas E. Waggaman and John Ridout, Trustees', subdivision of Woodley Park, as per plat recorded in Liber County No. 15, folio 7, of the records aforesaid, in trust to secure a note of James B. Nicholson for \$125,000, bearing date the said 10th day of October, 1901, and payable three years after date to the order of said Thomas E. Waggaman and by him endorsed, with interest until paid, at the rate of 5 per centum per annum, payable semi-annually, both the principal and interest of said note payable at said Riggs national bank.

42 For greater certainty as to the terms and conditions of said deed of trust reference is hereby made to the record thereof in Liber 2594, at folio 298, of said land records.

The said note for \$125,000 is held and owned by defendant The Corcoran Gallery of Art and interest thereon has been paid to the 10th of April, 1904.

38. That on the 2d day of June, 1904, the said Thomas E. Waggaman and John Ridout, trustees, in further execution of the trusts vested in them by said deed in trust from Fannie A. Moore, dated July 14, 1887, made, executed, and delivered a certain other deed of trust and thereby conveyed to said defendants, Arthur T. Brice and William J. Flather, their heirs and assigns, lots 74 to 77, both inclusive, and lots 79 to 83, in block 23, in Thomas E. Waggaman and John Ridout, trustees, and others' subdivision of part of "Woodley Park," now known as "Waggaman and Ridout, trustees', addition to the city of Washington," as per plat recorded in Liber County No. 14, at folio 99, of the records of the office of the surveyor of the District of Columbia, in trust to secure note of James B. Nicholson for \$17,700, bearing date the said 2d day of June, 1904, and payable to the order of said Thomas E. Waggaman and by him endorsed, with interest until paid, at the rate of 5 per centum per annum, payable semi-annually.

For greater certainty as to the terms and provisions of said deed of trust reference is hereby made to the record thereof in Liber 2809, at folio 413, of said land records.

No interest has been paid on said note and the same is now held and owned by the defendant the Corcoran Gallery of Art.

43 39. That on the 13th day of June, 1904, the said Thomas E. Waggaman and John Ridout, trustees, in further execution of the powers in them vested by said deed in trust from Fannie A. Moore, dated July 14, 1887, made, executed, and delivered a certain other deed of trust and thereby conveyed to said defendants, Arthur T. Brice and William J. Flather, their heirs and assigns, lots 3 to 7, in block 17; lots 11 to 19, in block 18; lots 4 to 9, in block 21; lots 69 to 71, in block 23, Woodley Park, in Thomas E. Waggaman and John Ridout, trustees' subdivision, as per plat recorded in Liber County No. 15, folio 7, of the records of the office of the surveyor of the District of Columbia; also lots 84 to 88, in block 23, "Woodley Park," in Thomas E. Waggaman and John Ridout, trustees, and others' subdivision, as per plat recorded in Liber

County No. 14, folio 99, of the records aforesaid, all of said land now known as "Waggaman and Ridout's addition to the city of Washington," in trust to secure 28 notes of said James B. Nicholson, numbered from 1 to 28, aggregating \$40,000, all bearing date the said 13th day of June, 1904, and payable two years after date to the order of said Thomas E. Waggaman and by him endorsed, with interest until paid, at 5 per centum per annum, payable semi-annually, and with interest at 5 per centum per annum on unpaid interest installments, both the principal and interest of all said notes payable at the said Riggs' national bank.

Said notes in denominations as follows: Nos. 1 to 5 and 7 to 14 and 18 to 28 for \$1,500 each, Nos. 6, 15, 16, and 17, for
44 \$1,000 each, and the interest to accrue thereon are by said trust secured separately and exclusively as follows: No. 1, on lot 3, block 17; No. 2, on lot 4, block 17; No. 3, on lot 5, block 17; No. 4, on lot 6, block 17; No. 5, on lot 7, block 17; No. 6, on lot 11, block 18; No. 7, on lot 12, block 18; No. 8, on lot 13, block 18; No. 9, on lot 14, block 18; No. 10, on lot 15, block 18; No. 11, on lot 16, block 18; No. 12, on lot 17, block 18; No. 13, on lot 18, block 18; No. 14, on lot 19, block 18; No. 15, on lot 4, block 21; No. 16, on lot 5, block 21; No. 17, on lot 6, block 21; No. 18, on lot 7, block 21; No. 19, on lot 8, block 21; No. 20, on lot 9, block 21; No. 21, on lot 69, block 23; No. 22, on lot 70, block 23; No. 23, on lot 71, block 23; and No. 24, on lot 84, block 23; No. 25, on lot 85, block 23; No. 26, on lot 86, block 23; No. 27, on lot 87, block 23; and No. 28, on lot 88, block 23.

And complainant is informed and so charges that said notes are now held and owned by defendants as follow:

By Anthony F. Lucas, six notes of \$1,500 each and one note of \$1,000.

By John G. Walker, ten notes of \$1,500 each.

By Josephine Tilton, two notes of \$1,500 each.

By Catherine M. Humphreys, one note for \$1,500.

By Ellen Daingerfield, one note for \$1,000 and one note of \$1,500.

By Columbia Fire Insurance Company, two notes for \$1,500 each and one note of \$1,000.

By John A. Rodgers, two notes of \$1,500 each.

By Jeannie Turnbull, one note of \$1,000.

45 No interest has been paid on any of said notes.

For greater certainty as to the terms and provisions of said deed of trust reference is made to the record thereof in Liber 2819, at folio 203, of said land records.

40. That on the 22d day of September, 1904, defendants Britannia W. Kennon and Augustus Jay exhibited their original bill in this honorable court, numbered in equity 24921, against defendant Thomas E. Waggaman and others, wherein they allege and aver that on the 11th day of February, 1887, the said Fannie A. Moore, being then seized in fee of the land conveyed by deed recorded in the land records of said District, in Liber 1225, at folio 330, and hereinbefore referred to, conveyed said land to one Henry D. Boteler,

since deceased) and one Charles E. Banes, in trust to secure the payment to Luther S. Fristoe of \$25,000, represented by said Fannie A. Moore's 17 promissory notes, two of said notes being for \$5,000 each and 15 for \$1,000 each; that, having confidence in said Thomas E. Waggaman, the plaintiffs gave him money to invest for their account, and that he, said Waggaman, invested \$5,000 of said Jay's money in one of said notes of like amount and endorsed said note to him in January, 1891, and \$5,000 of the plaintiff Brittanica W. Kennon's money in the other of said notes for said sum, both notes being left with said Waggaman for convenience; that the interest on said notes was paid to the 11th day of August, 1904, but that the principal thereof was wholly unpaid; and that, although said notes had not been paid, the said deed of trust had been released without the knowledge or consent of the plaintiffs and in fraud of their rights in the premises. The bill prays for a reinstatement of the said deed of trust.

That subsequently defendant James Gibbons, Cardinal, Archbishop of Baltimore, and defendant Anne C. Philips were admitted to intervene in said cause on petitions averring that the said cardinal held five of said \$1,000 notes, which were endorsed to him about January 25, 1899, and on which interest had been paid to the — day of —, 1904, but no part of the principal, and that the said Anne C. Philips held one of said notes for \$1,000, the same having been endorsed to her on the 13th of February, 1897, subject to a credit of that date of \$250, and that interest had been paid her down to August 11, 1904, but the balance remaining due of the principal, to wit, \$750, was wholly unpaid. The intervening petitioners pray the same relief as that asked in the original bill.

The said Thomas E. Waggaman answered the bill, and admitted that the notes described in the bill and intervening petitions had not been paid, and that the deed of trust securing said notes had been inadvertently released and ought to be reinstated, and the papers, records, and books of account of the said Thomas E. Waggaman, now in the possession of this complainant, show, according to the report of said expert accountants, that said notes have not in fact been paid, and that others of said notes, also unpaid, aggregating \$1,900, are held by defendants Eugene Ives, Daniel B. Clark, and John W. Pilling.

41. That on the 24th day of September, 1904, defendants Joseph T. Byrne, Mary Helen Harrison, Brittanica W. Kennon, Nora Correll, and Joseph T. Byrne and Francis P. Byrne, executors of the will of Patrick Byrne, exhibited their original bill in this honorable court, numbered in equity 24927, against the said Thomas E. Waggaman and others, wherein they allege and aver that the said Fannie A. Moore, on the 24th day of June, 1887, conveyed to defendants Irving Williamson and Samuel Waggaman their heirs and assigns, all the lands conveyed, or intended so to be, to said Fannie A. Moore, by the hereinbefore-mentioned deed recorded among the land records of said District, in Liber No. 1225, at folio 330, in trust to secure the payment to one William M. Hodges of the sum of \$35,000, represented by her forty promissory

notes, bearing even date therewith and payable three years after date, with interest at the rate of 6 per cent., 10 of said notes being for \$500 each and the remaining 30 for \$1,000 each; that the plaintiff Joseph T. Byrne holds two of said \$1,000 notes, the said executors four of said \$1,000 notes, the said Mary Helen Harrison two of said \$1,000 notes, the said Britannia W. Kennon one of said \$500 notes, and the said Nora Correll one of said \$1,000 notes, subject to a credit of \$100 as of date December 15, 1890; that no part of the principal of said notes has been paid, except the sum of \$100 on the note held by said Nora Correll, and that, although said notes had not been paid, the said deed of trust had been released without the plaintiffs' knowledge or consent and in fraud of their rights. The bill prays for a reinstatement of said deed of trust.

On the 25th day of October, 1904, the defendant, the Catholic University of America was admitted as an intervenor in said
48 suit on a petition filed in the cause, averring that it held and owned three of said notes for \$1,000 each. On the same day the defendant The President and Directors of Georgetown College was admitted as an intervenor in said suit on a petition averring that it held and owned 14 of said notes, aggregating \$12,500.

On the same day defendant E. C. Humphreys was admitted as an intervenor in said suit on a petition averring that she held one of said notes for \$500.

And on the same day defendant Mary Anna Riley was admitted as an intervenor in said suit on a petition averring that she held one of said notes for \$1,000 and another for \$500.

All of said petitions further allege that no part of the principal of the notes therein described had been paid, and that the said deed of trust had been released without their knowledge or consent and in fraud of petitioners' rights, and prayed the same relief as that asked for in the original bill.

The answer of defendant Thomas E. Waggaman to the original bill was filed on the 28th day of September, 1904, and it is therein alleged that the said trust had not been wholly released, but that enough of said land still remained subject to the liens thereof to amply secure the payment of all of the notes mentioned in the original bill and others of the same series, which he says are held and owned as follows:

Georgetown College, \$12,500; the Catholic University, \$3,000; Amy M. Bernard, \$1,900; Annie E. Bowie, \$1,000; estate of Marian Dement, \$500; estate of Rose Kleiber, \$500; M. R.
49 Stone, \$500; E. T. McPherson, \$500, and Ralston and Waggaman, trustees, \$500.

That the books of account and papers of the said Thomas E. Waggaman in the possession and under the control of this complainant show, according to the report of said expert accountants, that the principal of the said notes mentioned and described in the said original bill and intervening petitions and in the said answer thereto of the said Thomas E. Waggaman has not in fact been paid, and that the same are held and owned as follows:

Mary Anna Riley, \$1,000 and \$500, less \$200 paid November 29, 1890.....	\$1,300
Mattie B. Ellery.....	500
Jos. T. Byrne.....	2,000
Executors of will of Patrick Byrne.....	4,000
Elizabeth P. McPherson.....	500
B. W. Kennon.....	2,000
Estate of Rose Kleiber.....	500
Amy M. Bernard.....	1,900
Nora Correll.....	900
Edward L. Chapin.....	500
Annie E. Bowie.....	1,000
Mary H. Harrison.....	2,000
E. C. Humphreys.....	500
Margaret R. Stone.....	500
Jackson R. Ralston and another, trustees estate of Tyler....	800
Georgetown College.....	12,500
Catholic University.....	3,000
	<hr/>
	34,400

50 The said records also show that subsequent to its purchase by her the said Mary H. Harrison borrowed from said Thomas E. Waggaman, on the security of said two notes of \$1,000 each, the sum of \$1,200, and that the balance due her by him, said Waggaman, is \$800.

The said records also show that the note for \$500, referred to in said answer as belonging to the "estate of Marian Dement," is now held and owned by defendant Mattie B. Ellery; that the note for \$500, stated in said answer as belonging to estate of Rose Kleiber, is now represented and held by Edward M. Byrne, executor of her will; that defendant Britannia W. Kennon, who, as intervenor in said suit, claims to own one of said notes for \$500, owns notes aggregating \$2,000, and the counsel of record for said Britannia W. Kennon has informed this complainant that the said Kennon does in fact hold and own notes of said series aggregating \$2,000, and that the averments of her said intervening petition are so far erroneous.

That defendant Jackson H. Ralston and another, to this complainant unknown, hold one of said notes for \$500 as trustees of the estate of one Tyler, also to this complainant unknown.

The said records also show that but \$600 has been paid on the principal of said debt of \$35,000, and that there remains due and unpaid of said debt the sum of \$34,400.

And in this connection this complainant shows that he has caused the title to said lands so conveyed by said deed of trust to be examined by the Columbia Real Estate Title Insurance Company of said District, and that said company reports that said deed

51 of trust has not been released as to any part of block 1, in said Thomas E. Waggaman and John Ridout, trustees,' addition to the city of Washington, but is still a first lien thereon, the said block as hereinbefore shown, lying north of Cathedral avenue.

42. That said Thomas E. Waggaman heretofore, to wit, on the 26th day of September, A. D. 1904, by a decree passed in this honorable court, sitting as a court of bankruptcy, and in a cause pending in said court numbered 361 in bankruptcy, was declared and adjudged a bankrupt, and the complainant was subsequently duly elected trustee of said bankrupt. The said election was approved by said court on the 14th day of December, A. D. 1904, and complainant, having on said day duly qualified as such trustee, forthwith entered upon the discharge of his duties and still continues so to act.

43. That on the 25th day of July, A. D. 1904, said Catholic University procured the said bankrupt and said John Ridout, trustees, to make, acknowledge, and deliver a deed of trust conveying to defendants George E. Hamilton and Irving Williamson, trustees, their heirs and assigns, all of the hereinbefore-described real estate, then remaining in said Waggaman and Ridout, trustees, "including all right, title and interest which they now possess or hold as trustees in and to the said tracts known as Pretty Prospect, Woodley, Waggaman and Ridout, trustees', addition to the city of Washington, and Woodley Park, whether subdivided or unsubdivided, together with all the improvements in any wise appertaining, and all the estate,

52 interest and claim, either at law, or in equity, or otherwise however, of the parties of the first part, of, in, to, or out of the said land and premises." in trust, to secure the defendant, the said Catholic University, in the sum of \$876,168.96. represented by certain promissory notes of divers persons which the said Thomas E. Waggaman had made or caused to be made and endorsed to the said Catholic University, and all of which he, the said Waggaman, had guaranteed by his written endorsement thereon. All of said notes, as is shown by their several and respective dates, were given and the said guaranties made long before the date of said deed of trust and for moneys received by said Waggaman, as treasurer of said university, as this complainant is informed and believes and therefore charges and offers to prove, prior to the year 1894, and complainant further avers and charges on information and belief that neither at the time of the execution of said deed of trust nor for many years prior thereto was there or had there been any advance of money by the said university to the said Thomas E. Waggaman, but that the sole purpose and object of said deed of trust was the procurement of security for the payment of a long antecedent liability, contrary to the provisions of the bankruptcy law. The said deed of trust was duly recorded among the land records of the District of Columbia on the 22d day of August, 1904, in Liber 2842, at folio 13, and for a more full and particular description of notes attempted to be secured thereby and of the terms and provisions of said deed of trust reference is made to a copy of said trust, herewith filed, marked "Exhibit H. R. D. No. 10."

44. That at the time said deed of trust was so as aforesaid executed, delivered, and recorded and for several years prior thereto
53 the said Thomas E. Waggaman was insolvent, the aggregate of all his property at a fair valuation not being sufficient in amount to pay his debts.

45. That said Woodley Park, so as aforesaid conveyed to defendants Hamilton and Williamson, has been appraised by the appraisers duly appointed in said bankruptcy proceedings as being worth \$1,200,000, and the complainant is otherwise informed and believes, and on such information and belief charges and avers and offers to prove, that said Woodley Park was reasonably worth said sum and no more on the said 25th day of July, A. D. 1904. At the time the deed of trust was so as aforesaid recorded the said tract of land was subject to prior liens to an aggregate of about \$360,000, and the effect of an enforcement of said deed of trust will be to enable said defendant, The Catholic University of America, to obtain a greater percentage of its said debt than any other creditor of the said Wag-gaman of the same class, there being many such creditors having provable claims against him aggregating more than two millions of dollars.

46. That the complainant is informed and believes, and, so believing, charges, avers, and offers to prove, that for many months prior to the date of said deed of trust the said Catholic University of America, its committees, officers, and attorneys, had caused investigations and examinations to be made of investments made by the said Thomas E. Waggaman for its account and of the real estate holdings and general financial status and condition of the said Wag-gaman, by means of which examinations and investigations the said Catholic University, its officers and attorneys, acquired and
54 had reasonable ground to believe that it was intended by said deed of trust to give said university a preference, the effect and operation whereof would be to secure to said university a greater percentage of its said debt than any other creditors of the said bankrupt in the same class with said university would or can receive out of his property and estate.

47. That defendant John Ridout was on the 24th day of February, A. D. 1905, by decree of this honorable court, sitting as a court of bankruptcy, duly adjudged a bankrupt in bankruptcy cause No. 388 on the dockets of the clerk of this honorable court.

That defendant Charles H. Merrilat was duly elected trustee by the creditors of said bankrupt, has been approved as such by the court, and has duly qualified and is now acting as such trustee.

48. That the complainant is advised and believes, and therefore charges and avers, that in his capacity as trustee as aforesaid he is entitled to the aid of this court in enabling him to procure the sale of all the right, title, interest, and estate of all the parties to this suit in and to the real estate described herein, in order that he may realize the share thereof which belongs to his said bankrupt, and in ascertaining and determining the relative rights of all the holders of notes secured by the hereinbefore-mentioned incumbrances and of all the equitable owners under the several instruments hereinbefore mentioned, described, and exhibited; and because he is without adequate remedy save in this honorable court, where such matters are properly cognizable, he therefore,

1. That the said Thomas E. Waggaman, Christine Waggaman, John Ridout, Frances E. Ridout, Charles H. Merillat, John F. Waggaman, Alice V. Waggaman, Henry P. Waggaman, Charlotte Waggaman, Samuel Waggaman, Mary T. Waggaman, The Washington Loan and Trust Company (a corporation), Sue Plain, Charlotte Plain Munn, Susie B. Plain Martin, William B. Hibbs, E. C. de Q. Woodbury, Eudora M. Clover, Helen O. Paine, James Hoy, Rebecca W. Walker, Nannie R. McComb, Leila M. Waller, Elvira L. de Johnson, Gracie K. Richards, Beatrice P. Marmion, Eliza A. Saunders, M. Callie Perry, Francis M. Ramsay, Louisa Wilson, Anthony F. Lucas, John G. Walker, Jeannie Turnbull, Josephine Tilton, Catherine M. Humphreys, Ellen Daingerfield, John A. Rodgers, Britannia W. Kennon, Daniel B. Clark, John W. Pilling, Joseph T. Byrne, Mary Helen Harrison, Nora Correll, Mary Anna Riley, Mattie B. Ellery, Amy M. Bernard, Edward L. Chapin, Margaret R. Stone, Elizabeth T. McPherson, Arthur T. Brice, William J. Flather, Charles E. Banes, Irving Williamson, William Wilkins Carr, James M. Johnson, Jackson H. Ralston, George E. Hamilton, Francis P. Byrne, the Columbia Fire Insurance Company (a corporation), the Corcoran Gallery of Art (a corporation), the Louise Home (a corporation), the Catholic University of America (a corporation,) the President and Directors of Georgetown College (a corporation), Edward M. Byrne, and Riggs & Co., (a partnership) may be made parties defendant to this bill and duly served with process requiring them and each of them to be and appear in this honorable court on some certain day, to be thereon named, to answer this bill and abide by and perform such orders and decrees as may be passed herein.

56 And, forasmuch as the said Eugene Ives, Augustus Jay, Emily A. Shuman, Kate M. Billings, Clara V. Dorsey, James L. McLane, Annie E. Bowie, James Gibbons (Archbishop of Baltimore), E. C. Humphreys, Clara J. Heyland, H. Gordon McCouch, William P. Gest, and Walter C. Harris are non-residents of the District of Columbia, that the usual order of publication may be passed giving notice of the substance and object of this bill, and commanding them and each of them, the said last-named persons, to be and appear in this court and answer the exigencies of this bill.

2. That all the right, title, interest and estate of all the parties to this suit in and to the real estate known as "Woodley," and more particularly described in paragraph 33 of this bill, may be sold under the order and direction of this honorable court by a trustee or trustees by it to that end appointed.

3. That pending this suit a receiver may be appointed by this honorable court to take possession of said real estate and make sale of such parts and parcels thereof from time to time or pendente lite as the court may order for the purpose of paying taxes and other charges for the preservation of the estate and such other sales as the

court may from time to time deem to the best interests of all parties concerned.

4. That the deed of trust of July 25, 1904, to defendants George E. Hamilton and Irving Williamson, trustees, to secure an alleged indebtedness of Thomas E. Waggaman to said Catholic University
57 as therein set out, may be decreed to be a preference within the meaning of the bankruptcy law in force in the District of Columbia, and as such be avoided, set aside, and for nothing held.

5. That the proceeds of the sale or sales of said real estate described in the bill may, under the direction of this honorable court, be distributed to the parties in interest according to their several and respective rights and priorities.

6. That the complainant may have such other and further relief as the nature of the case may require and to this court seem fit and proper.

And complainant will ever pray, etc.

H. ROZIER DULANY.

SAMUEL MADDOX,
H. PRESCOTT GATLEY,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *set*:

Before me, the undersigned, a notary public in and for the said District of Columbia, personally appeared H. Rozier Dulany, who, being first duly sworn according to law, deposes and says:

I have read over the foregoing bill by me subscribed and know the contents thereof. The matters and things therein stated as of my personal knowledge are true, and the matters and things stated on information and belief I believe to be true.

H. ROZIER DULANY.

Subscribed and sworn to before me this 22d day of August, A. D. 1905.

[SEAL.]

ALBERT W. SIOUSSA.

58

Answer of Christine Waggaman.

Filed Oct. 3, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 25649, Docket 57.

H. ROZIER DULANY, Trustee in Bankruptcy of Thomas E. Waggaman, Complainant,

vs.

THOMAS E. WAGGAMAN et al., Defendants.

This defendant for answer to so much of the bill of complaint herein as she is advised it is necessary and material for her to make answer to says:

She has no personal knowledge of the many allegations and averments in the said bill contained; except that she says that she is the wife of the said Thomas E. Waggaman, as in the said bill alleged. As the wife of said Thomas E. Waggaman, she avers that she is entitled to her dower interest in whatever estate, legal or equitable, the said Thomas E. Waggaman may be ascertained to have in the property involved in this suit and she claims the same. She is willing to concede that the allegations of the bill, in so far as they do not conflict with her interests, are true; in so far as they do conflict with her interests she demands strict proof. She is advised by counsel that the allegations of paragraph 46 of the bill, to the effect that the conveyance in trust to secure the Catholic University of America constitutes preference and ought to be set aside are
 59 correct and she joins the complainant in said allegations and in the prayer that said conveyance be so set aside.

CHRISTINE WAGGAMAN.

MILLAN & SMITH,

Solicitors for Christine Waggaman.

DISTRICT OF COLUMBIA, *To wit:*

Christine Waggaman being duly sworn upon her oath says: I have read the foregoing answer by me subscribed and know the contents thereof and the facts therein stated as of personal knowledge are true; those stated as upon information and belief she believes to be true.

CHRISTINE WAGGAMAN.

Subscribed and sworn to before me this 30th day of September, A. D. 1905.

CLARKE WAGGAMAN,
Notary Public, D. C.

The Joint and Separate Answer of John F. Waggaman and Alice V. Waggaman.

Filed Jan. 31, 1906.

In the Supreme Court of the District of Columbia.

In Equity. No. 25649.

HENRY ROZIER DULANY, Trustee in Bankruptcy of Thomas E. Waggaman, Complainant,
 vs.

THOMAS E. WAGGAMAN et al., Defendants.

60 These defendants now and-at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill con-
 5—2171A

tained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

1 to 14. Answering paragraphs 1 to 14, both inclusive of the said bill of complaint, these defendants admit the same to be substantially true.

15. Answering the 15th paragraph of said bill of complaint, these defendants admit that said Fannie A. Moore did execute the deed of trust in said paragraph mentioned, and thereby conveyed to the defendants Irving Williamson and Samuel Waggaman the real estate therein described for the alleged purpose of securing William M. Hodges the sum of thirty-five thousand dollars (\$35,000) as stated in said paragraph. These defendants further admit that the said Williamson and Waggaman as Trustees under said deed of trust, released the said deed of trust to the extent that is alleged in said 15th paragraph. These defendants have no knowledge as to the other averments of fact contained in said paragraph and can therefore neither admit or deny the same, and if material they demand strict proof thereof.

16. Answering the 16th paragraph of said bill, these defendants admit that the said Fannie A. Moore executed the deed mentioned in the 15th paragraph of said bill, a correct copy of which is made Exhibit H. R. D. No. 1 of said bill, but as to the other allegations of said paragraph they are advised and believe and therefore
61 aver that the same are conclusions of law as to the legal effect of said deed, as to which these defendants are not required to make any further or other answer, and for the true meaning and effect of said deed, they refer to the deed itself.

17. Answering the 17th paragraph of said bill, these defendants admit that the real beneficial owners of the property described in the deed from Fannie A. Moore to Thomas E. Waggaman and John Ridout, Trustees, mentioned and described in the 16th paragraphs of said bill, were the defendants Thomas E. Waggaman, Henry P. Waggaman and John F. Waggaman, and that the said there last named defendants contemporaneously with the execution of the said deed by the said Fannie A. Moore, entered into the written agreement referred to in the 17th paragraph of said bill, a correct copy of which is made Exhibit H. R. D. No. 2 of said bill. These defendants are advised and believe, and therefore aver that the other averments in said paragraph are conclusions of law as to the legal effect of said agreement, as to which they are not required to make any further or other answer, and for the true meaning and effect of said agreement, they refer to the said agreement itself.

18. Answering the 18th paragraph of said bill, these defendants admit that the said John F. Waggaman and Benjamin K. Plain entered into and executed the several agreements mentioned in the 18th paragraph of said bill, correct copies of which are filed with said bill as Exhibit H. R. D. No. 3, and these defendants are informed and believe that the said Benjamin K. Plain and Henry P. Waggaman entered into and executed the several agreements
62 also mentioned in said 18th paragraph of said bill. Further answering said paragraph, these defendants are advised and

believe, and therefore aver that the other allegations therein are conclusions of law as to the legal effect of said agreements, as to which they are advised they are not required to make any further or other answer, and for the true interpretation and effect of said several agreements, they refer to the said agreements themselves.

19. Answering the 19th paragraph of said bill, these defendants say that they have no knowledge as to the matters of fact therein alleged, and can neither admit or deny the same, and if material, they demand strict proof thereof.

20. Answering paragraph 20 of said bill, these defendants say that they admit that the defendants John F. and Henry P. Waggaman executed the paper dated May 31, 1888, a true copy of which is filed with said bill as a part of Exhibit H. R. D. No. 5. Owing to the many transactions between said Thomas E. Waggaman and the defendant John F. Waggaman, it is impossible for these defendants to state upon knowledge whether the amount of twenty-five thousand dollars (\$25,000), therein referred to is an existing obligation of the defendants John F. Waggaman and Henry P. Waggaman, but upon information and belief, these defendants say that there is nothing now due and owing from the defendant John F. Waggaman to the said Thomas E. Waggaman by virtue of said agreement. These defendants admit that the defendant John F.

Waggaman and defendant Henry P. Waggaman executed the paper writing dated July 25, 1888, a true copy of which is made a part of said Exhibit H. R. D. No. 5, and these defendants say
63 that the said Thomas E. Waggaman has not been required to pay anything on account of any endorsements of the notes of the defendant John F. Waggaman, but on the other hand the said John F. Waggaman has been and is still paying large sums of money on notes upon which he became a party for the accommodation of the said Thomas E. Waggaman. These defendants are without knowledge as to the remaining allegations of said paragraph 20, and if material to their interests, call for strict proof of the same.

21. Answering paragraph 21 of said bill, these defendants say that they admit that the said Henry P. Waggaman executed the conveyance or deed of trust therein mentioned, a correct copy of which is filed with said bill as Exhibit H. R. D. No. 6, and that notice thereof was given to said Thomas E. Waggaman and John Ridout and their consent obtained thereto. These defendants cannot recollect that the said John F. Waggaman ever executed any instrument bearing date the 17th day of November, 1880, for the purpose alleged in said paragraph 21, and if material to the interest of these defendants, call for strict proof of the same. These defendants also admit that the parties named in said paragraph as the Executors and Trustees of Alfred D. Jessup, are such, under his last will and testament and duly qualified.

22 to 23. Answering paragraphs 22 and 23, these defendants say that they have no knowledge as to the matters of fact therein alleged, and can neither admit nor deny the same and if material they demand strict proof thereof.

24. Answering paragraph 24, these defendants admit that by the

terms of the agreement dated July 14, 1887, executed by
64 Thomas E., John F. and Henry P. Waggaman, and made
Exhibit H. R. D. No. 2 to the bill, it is provided that the said
Thomas E. Waggaman and John F. Waggaman shall have the ex-
clusive management of said property with respect to the improve-
ment thereof until such improvements are completed in the same
manner as the property on the south side of the road is improved,
and also in relation to the time, price, and terms of sale of said
property or any part thereof for the period of five years from said
date. These defendants admit that the lands on the north side of
said road were uneven and hilly, and that in the grading of these
lands and the laying out, grading and improvement of Connecticut
Avenue, Cathedral Avenue and other streets dedicated to public
use in said subdivision, large sums of money were expended. They
charge however, in reference to the same, that the said Thomas E.
Waggaman made such improvements after the expiration of five
years from July 14, 1887, without authority from these defendants
or either of them. These defendants are without knowledge as to
from what source the said Thomas E. Waggaman obtained the
money by which said improvements were made, but they believe
large sums of money were obtained from the sales of said lots in said
Woodley, and in so far as the source from which said money was
derived may be material to the interest of these defendants, they call
for strict proof of the same. These defendants say that said John
F. Waggaman has contributed his share of the interest on any loan
upon said property authorized by him, and the cost of any
improvements of said property authorized by him and his share of
the taxes on the property so far as he has been able to ascer-
65 tain the same. Further answering said paragraph, these de-
fendants say that they have no knowledge or information as
to the accounts records, papers or other data from which the sum-
marized account marked Exhibit H. R. D. No. 9 to the bill of com-
plaint was made up, but they deny that the said Thomas E. Wagg-
man was entitled to be paid or that the complainant as Trustee in
Bankruptcy in right of said Thomas E. Waggaman, is entitled to
recover or to be paid from the said real estate the sum of seventy-one
thousand seven hundred ninety-six dollars and thirty-four cents,
(\$71,796.34) or any part thereof, against the interest of these de-
fendants, and these defendants further say that upon a proper ac-
counting of the authorized receipts and expenditures of the said
Thomas E. Waggaman, no sum whatsoever would be found to be
due from these defendants or from either of them.

25. Answering paragraph 25, these defendants deny the allega-
tions of the same and demand strict proof thereof.

26. Answering the 26th paragraph of said bill, these defendants
say that they have no knowledge as to the facts therein alleged, and
cannot admit the same, and if material, they demand strict proof
thereof.

27. Answering paragraph 27, these defendants admit that the
equitable interest in said lands is as alleged in said paragraph, but
they deny that the interest of these defendants or either of them is

in any way subject to any balance alleged to be due the said Thomas E. Waggaman, because as is heretofore set forth in this answer, these defendants deny that any balance is due the said Waggaman.

28. Answering the 28th paragraph of said bill, these defendants admit that on the 16th of January, 1905, the defendant, Washington Loan & Trust Company, exhibited its bill in this court against these defendants and others substantially as stated in said paragraph, but these defendants are without knowledge as to the other allegations of said paragraph, and if material demand strict proof of the same.

29. Answering paragraph 29, these defendants say that they have no knowledge as to the facts therein alleged, and cannot admit the same, and if material they demand strict proof thereof.

30. Answering paragraph 30, these defendants admit that the representatives of the estate of the said Jessup have not foreclosed the deed of trust therein mentioned or otherwise exhausted the security provided by that deed of trust. But as to the other allegations of said paragraph, they are advised and believe, and therefore aver that the same are conclusions of law as to which these defendants are not required to make any answer.

31. Answering paragraph 31, these defendants say they have no knowledge of the facts therein alleged, and cannot admit the same, and if material they demand strict proof thereof.

32. Answering the 32nd paragraph, these defendants admit that the defendants Thomas E. Waggaman and Ridout on the 15th of June, 1888, made and caused to be recorded a certain plat of subdivision of the real estate described in the bill and that the same was recorded in Liber County No. 6, folio 133, of the Surveyor's office of the said District, but they are also informed and believe that the said subdivision was subsequently on the 15th of February, 1897, by action of said Waggaman and Ridout and the Commissioners of the District of Columbia, revoked as appears by the record of said revocation in said Liber County No. 6, folio 133. Further answering said paragraph, these defendants say that they are informed and believe that on the 21st day of March, 1900, and on the 26th of June, 1900, and on the 28th of March, 1902, the said Waggaman and Ridout caused to be recorded in the office of the Surveyor of the District of Columbia, certain other plats of subdivisions of the lands in the bill described as set out in said paragraph 32 of said bill, and further that on the 19th of March, 1901, the said Waggaman and Ridout caused a certain other plat of subdivision of a part of said lands to be recorded in the Office of the Surveyor of the District in Book County 13 page 90. That these defendants further say that none of the said several subdivisions attempted to be made by the said Waggaman and Ridout after the 15th of June, 1888, were made by them in the execution of any powers vested in them by the deed in trust from Fannie A. Moore to them, but that on the contrary each and every one of the said several acts of the said Trustees were wholly without authority from these defendants, and that all power and authority of the said Waggaman and Ridout in respect to said land ceased and

determined on the 13th of July, 1892, and these defendants deny that the said several subdivisions can have any binding force and effect against their rights or interest.

33. Answering the 33rd paragraph of said bill, these defendants say that they have no knowledge of the matters and things
68 therein alleged, and if material, they demand strict proof thereof, but they deny that the said Waggaman and Ridout and the said Coughlin or any of them had any power or authority to make any disposition of the lands as set forth in said paragraph after the 13th day of July, 1892, and that all such their acts were without authority and are null and void.

34. Answering the 34 paragraph of said bill, these defendants say that they have no knowledge of the matters of fact therein alleged, and if material they demand strict proof thereof, but they deny that the deed of trust therein described to secure the sum of forty-five thousand dollars, (\$45,000), was executed in the execution of powers vested in the said Waggaman and Ridout by the deed in trust from Fannie A. Moore to them. They deny that by the terms of said deed in trust, the said Waggaman and Ridout were given any power and authority to borrow money or to execute any deed of trust creating a loan upon said land for money so borrowed, and they aver that the said deed of trust and any lien attempted to be thereby created upon the said lands as to the interest of these defendants in said land is null and void.

35. Answering the 35th paragraph of said bill, these defendants say that they have no knowledge of the matters and things therein alleged, and if material they demand strict proof thereof. They deny that the deed of trust therein alleged to be executed by said Waggaman and Ridout to the defendants Brice and Flather was executed under any power vested in them by the deed in trust dated the 14th
69 of July, 1887, or under any other power whatsoever, but on the contrary, they aver that the said deed in trust gave to the said Waggaman and Ridout no power to execute said deed of trust to Brice and Flather, and no power to borrow money nor to secure the same by any lien upon the land in the bill described, and they aver that as to the interest of these defendants in said land the said deed of trust is null and void.

36. Answering the 36th paragraph of said bill, these defendants say that they have no knowledge of the matters and things in said paragraph alleged, and if material, they demand strict proof thereof, but they deny that the said Waggaman and Ridout had any power or authority to execute the deed of trust in said paragraph mentioned or to borrow any money or to create any lien for the security of the same upon the land in the bill described, and that as to the interest of these defendants in said land said deed of trust is null and void.

37. Answering the 37th paragraph these defendants say that they have no knowledge of the matters and things in said paragraph alleged, and if material, they demand strict proof thereof, but they deny that the said Waggaman and Ridout had any power or authority to execute the deed of trust in said paragraph mentioned or to

borrow any money or to create any lien for the security of the same upon the land in the bill described, and that as to the interest of these defendants in said land, said deed of trust is null and void.

38. Answering the 38th paragraph, these defendants say that they have no knowledge of the matters and things in said
70 paragraph alleged and of material, they demand strict proof thereof, but they deny that the said Waggaman and Ridout had any power or authority to execute the deed of trust in said paragraph mentioned or to borrow any money or to create any lien for the security of the same upon the land in the bill described, and that as to the interest of these defendants in said land said deed of trust is null and void.

39. Answering the 39th paragraph these defendants say that they have no knowledge of the matters and things in said paragraph alleged, and if material, they demand strict proof thereof, but they deny that the said Waggaman and Ridout had any power or authority to execute the deed of trust in said paragraph mentioned or to borrow any money or to create any lien for the security of the same upon the land in the bill described, and that as to the interest of these defendants in said land said deed of trust is null and void.

40. Answering the 40th paragraph of said bill, these defendants say that they are informed and believe that it is true that on the 22nd of September, 1904, a bill was filed in this Court by the Defendants Kennon and Jay, in which *the* James Gibbons, Cardinal Archbishop of Baltimore and Anne C. Phillips, subsequently intervened alleging in substance the facts in said paragraph mentioned, and that the defendant Thomas E. Waggaman answered the same substantially as alleged, but for accuracy and certainty if the proceedings be competent and material in this cause these defendants refer, for the true contents of said pleadings to the proceedings themselves. These defendants have no knowledge as to the other matters

and things in said paragraph alleged and if material they demand strict proof thereof. But these defendants further say
71 that neither of them is a party to said proceedings; that the said is *res inter alios acta* as to those defendants and that their rights cannot be in any wise affected thereby. That these defendants have no knowledge or notice of any irregularity in the execution of said release, or of any facts which would put them upon inquiry as to the same; that the said Banes was vested with the record title to said land and with the legal power to release and convey said property free and discharged from the lien of said deed of trust and that such release is valid as to these defendants and all persons rightly interested, in said property without notice of any such invalidity and that the said deed of trust cannot rightfully be reinstated as a lien upon said property paramount to the rights of these defendants thereon.

41. Answering the 41st paragraph of said bill, these defendants say that they are informed and believe that it is true that on the 24th day of September, 1904, the defendants Joseph T. Byrne, et al., filed a bill in Equity in this court to which the other defendants

named as intervening petitioners became parties in which they sought to have reinstated as a lien upon the property in the bill described the deed of trust executed on the 6th of June, 1887, by Fannie A. Moore to the defendants, Williamson and Samuel Waggaman; and that the defendant, Thomas E. Waggaman answered the said bill substantially as stated in said paragraph, but these defendants say that if the said proceedings be competent and material in this cause they prefer to refer for the true contents of said pleadings to the proceedings themselves. These defendants have no

72 knowledge as to the other matters and things in said paragraph alleged, and if material they demand strict proof thereof. Further answering said paragraph these defendants say that neither of them is a party to said proceedings that the same is *res inter alios acta* as to these defendants and that their rights cannot be in any wise affected thereby. That these defendants have no knowledge or notice of any irregularity in the execution of said release, or of any facts which would put them upon inquiry as to the same; that the said Irving Williamson and Samuel Waggaman were vested with the record title to said land and with the legal power to release and convey said property, free and discharged from the lien of said deed of trust and that such release is valid as to these defendants and all persons rightfully interested in said property without notice of any such invalidity, and that the said deed of trust cannot be rightfully *be* reinstated as a lien upon said property paramount to the lien of these defendants thereon.

42. These defendants admit the allegations of the 42nd paragraph of the bill to be true.

43. Answering the 43rd paragraph of said bill, these defendants say that they are informed and believe that the facts stated in said paragraph are substantially correct. Further answering said paragraph these defendants say that the said Ridout and Thomas E. Waggaman were without competent authority in law under the deed in trust to them to execute the said deed of trust to secure the defendant, Catholic University, the indebtedness thereby attempted to be secured or to create upon the property described in the bill any

73 lien in favor of said defendant Catholic University and further answering said paragraph these defendants say that they are informed and believe that the defendant, Catholic University, had actual knowledge that the said defendants Ridout and Thomas E. Waggaman held the title to said property in trust for other persons than themselves, and that none of the persons interested therein other than the defendant Thomas E. Waggaman was in any wise liable to the said Catholic University for any part of the indebtedness attempted to be secured by said deed of trust, but the entire indebtedness was the individual indebtedness of said Thomas E. Waggaman, and that said defendant, Catholic University had actual knowledge that in executing said deed of trust to secure said University the said Waggaman and Ridout were pledging trust property belonging to others to secure the individual debt of said Waggaman without the consent or knowledge of the beneficiaries of said trust. These defendants say that the said Catholic University at the

time the said deed of trust was executed well knowing that the defendants Ridout and Waggaman were without power or right to in any wise charge or effect the interest of the defendant John F. Waggaman for the purpose of securing the indebtedness of the said Thomas E. Waggaman, did then request the said Thomas E. Waggaman to obtain the written consent of the said John F. Waggaman to the execution of said deed of trust, and that application was made to the defendant John F. Waggaman by the defendant Thomas E. Waggaman for him, the said John F. Waggaman, to consent in writing to said deed of trust, but the said John F. Waggaman refused

so to do. And these defendants further say that the said deed
74 of trust to secure the indebtedness to said Catholic University is not a valid lien upon any of said property as against the interest of these defendants therein, but as to their interest is null and void.

44 to 46. Answering the 44th, 45th and 46th paragraphs of said bill, these defendants say they have no personal knowledge as to the facts therein alleged, and if material, they demand strict proof of the same.

47 to 48. Answering the 47th and 48th paragraphs of said bill, these defendants say that they admit the matters of fact therein set out to be true, and having fully answered said bill, these defendants pray to be dismissed with their reasonable costs in this behalf sustained.

JOHN F. WAGGAMAN.
ALICE V. WAGGAMAN.

ARTHUR PETER,

Attorney for Defendants John F.

Waggaman and Alice V. Waggaman.

I, John F. Waggaman, do hereby make oath and say: That I have read the foregoing answer by me subscribed and know the contents thereof, the matters and facts therein stated upon my personal knowledge are true and those stated upon information and belief, I believe to be true.

JOHN F. WAGGAMAN.

Subscribed and sworn to before me this 29 day of January, 1906.

[SEAL.]

NANNIE S. STOCKETT,
Notary Public.

75 I, Alice V. Waggaman, do hereby make oath and say:
That I have read the foregoing answer by me subscribed and know the contents thereof, the matters and facts therein stated upon my personal knowledge are true and those stated upon information and belief, I believe to be true.

ALICE V. WAGGAMAN.

Subscribed and sworn to before me this 29th day of January 1906.

[SEAL.]

NANNIE S. STOCKETT,
Notary Public.

The Joint and Several Answers of Arthur T. Brice and Others.

Filed Apr. 17, 1906.

In the Supreme Court of the District of Columbia.

No. 25649. Equity.

HENRY ROZIER DULANY, Trustee, etc., Complainant,
vs.

THOMAS E. WAGGAMAN et al., Defendants.

The Joint and Several Answers of the Defendants, Arthur T. Brice and William J. Flather, Trustees; E. C. de Q. Woodbury, Helen O. Paine, James Hoy, The Corcoran Gallery of Art (a corporation), Emily A. Shuman, Kate M. Billings, Rebecca W. Walker, Nannie R. McComb, Leila M. Waller, Elvira L. De Johnson, Riggs & Company, Eudora M. Clover, Clara V. Dorsey, Gracie K. Richards, Beatrice P. Marmion, Eliza A. Saunders, M. Callie Perry, James L. McLane, Francis M. Ramsay, William Wilkins Carr and
76 James M. Johnston, trustees; Louisa Wilson, Anthony F. Lucas, John G. Walker, Jeannie Turnbull, Josephine Tilton, The Columbia Fire Insurance Company (a corporation), and John A. Rodgers, to the bill of Complaint of the above named Complainant.

These defendants jointly and severally answering so much of the bill of complaint of the above named complainant filed in the above entitled cause as they are advised is material for them to answer, state as follows:

They have no personal knowledge as to any of the matters averred in the said bill save as is next hereinafter stated; therefore, they can neither admit nor deny the same, and they require full proof thereof in so far as the same affect their interests.

They admit the averments contained in paragraphs numbered thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight and thirty-nine of the said bill of complaint, and they claim they are respectively the holders of the said notes described in the said paragraphs as purchasers thereof for value and before maturity and without notice of any defense thereto or defect therein.

Further answering the said bill of complaint they aver that the parties named in the said paragraphs as holders of the promissory notes described therein, secured by the deeds of trust described therein, have by virtue of the said deeds of trust a valid and subsisting first lien upon the said property mentioned in the said several deeds of trust.

And now having fully answered the matters averred in the said bill in so far as these defendants are advised that it is necessary for them to make answer thereto, they pray to be hence
77 dismissed with their reasonable costs in this behalf by them most wrongfully sustained.

R. ROSS PERRY & SON,
Attorneys for the Above-named Defendants.

It is hereby agreed between counsel for the complainant and for the above mentioned defendants that this answer may be filed without any verification thereof and without the signatures of the parties thereto but only of counsel. And further inasmuch as this answer is filed for the immediate purpose of having the record in such shape that an interlocutory decree may be at once made for the appointment of Receivers in accordance with the stipulation of counsel this day filed, it is further agreed between counsel for the complainant and of these defendants that these defendants may file at any time such other and further answer as they may deem necessary. The demurrer heretofore filed by these defendants is hereby withdrawn.

SAM'L MADDOX,

Attorneys for Complainant.

R. ROSS PERRY & SON,

Attorneys for the Above-Named Defendants.

April 17, 1905.

Memorandum.

May 1, 1906.—Replication to various answers filed.

Opinion.

Filed Jun- 2, 1909.

In the Supreme Court of the District of Columbia.

No. 25649. Equity.

HENRY ROZIER DULANY, Trustee in Bankruptcy of Thomas E. Waggaman, Complainant,

vs.

THOMAS E. WAGGAMAN and JOHN RIDOUT, Trustees, et al.,
Defendants.

78 On August 23, 1904, a petition was filed by certain creditors of Thomas E. Waggaman, praying to have him adjudged a bankrupt.

On September 26, 1904, this court, sitting as a District Court in Bankruptcy, adjudged the said Waggaman to be a bankrupt; and thereafter the complainant herein was appointed trustee.

On September 22, 1904, Britania W. Kennon and Augustus Jay, filed a bill in equity in this Court, against Thomas E. Waggaman and others, being No. 24,921 Equity, by which they sought to have a certain deed of trust, executed by Fannie A. Moore, to Henry D. Boteler, and Charles E. Banes, trustees, to secure Luther S. Fristoe \$25,000 reinstated of record, they averring that they held some of the notes secured by said trust, and that said deed of trust had been released without their knowledge or consent, and in fraud of their rights.

On the 24th of September, 1904, Joseph T. Byrne and others filed a bill in equity in this court, being No. 24,927, against said Waggaman and others, seeking to have reinstated a deed of trust made by Fannie A. Moore to Irving Williamson and Samuel Waggaman, to secure William M. Hodges \$35,000, which they aver was wrongfully released, the notes held by them and secured thereby not being paid.

The property conveyed by each of the said deeds of trust were the tracts of ground in the District of Columbia previously conveyed to said Fannie A. Moore, and now commonly called "Woodley."

79 After the execution of the said deeds of trust, which it is charged were fraudulently released as aforesaid, and subject to other deeds of trust to secure deferred payments of purchase money and money borrowed, and which were all made by her, and all of which trusts secured notes aggregating \$140,464, the said Fannie A. Moore conveyed said tract known as "Woodley," to the defendants Thomas E. Waggaman and John Ridout, trustees, said deed being dated July 14, 1887, and recorded in Liber 1269, Folio 324 of the said land records. The trusts declared in this deed were as follows:

"To have and to hold the said land and premises, with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said parties of the second part, their heirs and assigns and the survivor thereof, his heirs and assigns, In trust nevertheless for the uses and purposes following, and none other, that is to say, in trust to hold said property, and to make such subdivision or subdivisions thereof as in their discretion may seem best, or to preserve the same as it now stands if they should deem it best so to do. And upon this further trust to sell said property, or any part thereof, by subdivision, subdivisions, or as entireties in their discretion for such price and upon such terms as they may think best, and to convey the same in fee simple, or for any less estate, discharged of all accountability on the part of a purchaser, or of any one dealing with said trustees, to see to or account for the application of the purchase money or other money, paid said trustees, said trustees to act in the sale and conveyance of said property in accordance with their judgment and discretion. And upon this

80 further trust to dispose of the proceeds of any sale or sales in accordance with a certain written agreement, signed by the three (3) parties interested in said property, bearing even date with these presents a copy of which said agreement, signed as aforesaid, having been given to each of said trustees and to each of said parties; but no purchaser or other person dealing with or buying from said trustees shall be in any way chargeable with any duty in respect of said agreement, but shall be absolutely discharged from any liability or responsibility in connection therewith. All powers conferred by this deed upon said parties of the second part may be executed by the survivor thereof, who may make the sales, above authorized, either at public or private sale in their discretion."

Under this deed in trust the said Waggaman and Ridout, trustees, conveyed certain portions of the said tract in fee as sales were

effected from time to time; and on March 3, 1900, May 21, 1900, June 25, 1901, October 10, 1901, June 2, 1904, and June 13, 1904, they executed six deeds of trust thereby conveying certain separate portions of said tract to Arthur T. Brice and William J. Flather, trustees, to secure respectively \$45,000, \$62,600, \$35,000, \$125,000, \$17,700 and \$40,000, the said deeds of trust reciting that the money borrowed and secured thereby was for the purpose of discharging encumbrances, or for purposes connected with the due execution of the trusts vested in the said trustees. These moneys were borrowed through Charles C. Glover and James M. Johnston, of Riggs & Co.

On July 25, 1904, said Thomas E. Waggaman and John Ridout, Trustees, executed a deed of trust upon all the said tract
81 commonly called "Woodley" to the defendants George E. Hamilton and Irving Williamson, to secure \$876,168.96 to the Catholic University of America, which deed of trust was recorded August 22, 1904, in Liber 2842, Folio 13, one of the land records of the District of Columbia.

The complainant herein, on August 22, 1905, filed his bill, making parties defendant all persons having or claiming any interest in the said tract of land called "Woodley;" and asking to have a sale thereof for the proper administration of the said bankrupt's estate, represented by him; and seeking to have set aside the deed of trust made to the defendants Hamilton and Williamson, to secure the said Catholic University the said sum of \$876,168.96, on the ground that the same was a preference within the meaning of the bankrupt law; and praying for a receiver to take possession of said estate, and to make sales thereof pendente lite, as may be ordered and decreed by the court, for the best interests of all parties concerned; and for a distribution of the proceeds of any such sales to the parties in interest, according to their several rights and priorities; and for such other and further relief as the case may require.

No attack is made by the bill upon the deeds of trust executed by the said trustees Waggaman and Ridout to the defendants Arthur T. Brice and William J. Flather, trustees, to secure the moneys loaned through the offices of Riggs & Co.

The trustees and the holders of notes secured under the said trusts, for brevity hereinafter called the Riggs trusts, answered the
82 said bill, as did other defendants; and receivers were appointed, who have, under the direction of the court, been managing the said estate, and making sales of portions of said tract.

On January 13, 1906, the defendants, The Washington Loan & Trust Co., executor and trustee of Benjamin K. Plain, and Sue Plain, Charlotte S. Munn, and Susie B. Plain Martin, filed a cross-bill herein, by which they attack the validity of the said Riggs trusts, on the ground that the said trustees Waggaman and Ridout had no power under the said deed to them in trust to borrow money on the said property, or to execute mortgages or deeds of trust thereon; and they pray that the said Riggs trusts may be declared to be null and void as against the interests of the Plain estate; and that the trustees, Brice and Flather, may be restrained from

attempting to advertise or sell said lands under the said trusts, and that the deed of trust to Hamilton and Williamson to secure the Catholic University, may also be decreed to be null and void as against them; and that in the distribution of the proceeds of sale of said real estate that no payment shall be made on any note secured by the Riggs trusts, or by the said trust securing the Catholic University; but that the proceeds of sale may be distributed to the complainants in this cross-bill, and to the other parties in interest, in accordance with their several and respective rights, as though no such deeds of trust had been executed by said Waggaman and Ridout, trustees.

The complainants in this cross-bill claim security for \$120,000, against the equitable title to an undivided five-sixteenths of
83 the said land, which it is averred Benjamin K. Plain formerly owned, and sold to Henry P. Waggaman for \$175,000, \$10,000, of which was paid in cash at the time of transfer, July 10, 1889, and notes given for the remainder, \$45,000 of the deferred payments having been paid, leaving the principal sum of \$120,000 due the Plain estate.

On February 26, 1907, the said Brice and Flather, trustees, and the beneficiaries under the said Riggs trusts, filed a cross-bill herein, in which they recite various allegations of the original bill, and of the cross-bill of The Washington Loan & Trust Co., et al., and then they aver that for many years prior to 1887 Henry P. Waggaman, John F. Waggaman, and Thomas E. Waggaman had dealt extensively in unimproved real estate in this District. That they purchased from different parties this tract now called Woodley, and had the same conveyed to Fannie A. Moore, a clerk in John F. Waggaman's office, who executed certain deeds of trust thereon, as before stated; and then conveyed the property to said Thomas E. Waggaman and John Ridout, Trustees.

They state that the whole purchase price for the said tract was \$104,792. They claim that the present valuation of the said tract is \$1,200,000 and that the increased value has been created, to a large extent, by the money of the complainants in this cross-bill.

They set out a portion of the agreement which existed between the said Waggamans, who are brothers, and which is referred to in the said deed in trust to Waggaman and Ridout, trustees; and that by the terms of that agreement Thomas E. Waggaman and John F.

Waggaman were to have the exclusive management of said
84 property in respect to the improvements thereof, until such improvements were completed in the same manner as the property on the south side of the road was improved, and also in relation to the time, price, and terms of sale of said property, or any part thereof, for the period of five years from the date of said paper, which was July 14, 1887.

That Thomas E. Waggaman had paid out \$33,217.15 upon improvements of the said tract up to November 11, 1891. That operations were then suspended, by reason of a panic, and were resumed in 1896. From that time until August 1904, said Waggaman expended a total of \$85,658.67 in improvements on such prop-

erty, all of which was derived from the proceeds of the notes bought by the complainants in this cross-bill. That the period of five years from July 14, 1887 was, by consent of the three brothers, and the complainants in the said cross-bill of The Washington Loan & Trust Co., et al. indefinitely extended.

They then set out in detail the various notes secured by the Riggs Trusts, and the parties holding the same averring that in order to raise money wherewith said Thomas E. Waggaman might finance the said venture, he and said Ridout, trustees, borrowed through the Riggs National Bank the various sums stated.

The complainants in the cross-bill aver that full power and authority to execute the said deeds of trust had been given to said Waggaman and Ridout, under the terms of the said deed in trust; and that the said deeds of trust are in all respects valid, and
85 constitute a first lien upon the real estate covered by them.

They further say that the right of the said trustees to execute said deeds of trust had been certified to by a reputable title examination company of the District of Columbia; and that they never heard that any doubt was entertained on that point by any one, until after the bankruptcy of said Thomas E. Waggaman.

They state that Benjamin K. Plain, by the terms of his contract with John F. Waggaman, agreed to release, if it became necessary for said trustees to obtain a new first encumbrance, provided his security *in* not thereby made less than it was at the time of making such new first encumbrance; and that this agreement clearly expressed his belief that said trustees had power to mortgage, and gave his consent thereto. That he died July 19, 1893, and his interests were thereafter represented by the said Washington Loan & Trust Co., his executor and trustee; and that the said Trust Company, and the next of kin of said Plain, are all charged in law with a knowledge of the acts of said trustees Waggaman and Ridout, in making the said Riggs trusts.

They aver that they have a prior lien in equity for the various sums so loaned; and that in any event they are entitled to subrogation with respect to all sums of money paid by them, as aforesaid, for their said promissory notes which were applied directly or indirectly, to the payment of purchase money, improvements, legal expenses, taxes, or other legitimate expenditures in connection with or for the benefit of the premises embraced in and conveyed by the aforesaid deeds of trust, described from paragraph 34 to 39 both inclusive, of the original bill herein.

86 The complainants in this cross-bill pray that the validity of the Riggs Trusts and notes be judicially determined; and that complainants be declared entitled to said notes, according to their respective ownership thereof. That in any event the said deeds of trust be decreed to be valid liens upon all of the interest of said Thomas E. Waggaman, and of the defendant Dulany, trustee, in the said premises; and that they be decreed to be entitled to repayment from the proceeds of sales of the lots embraced by said deeds of trust, all moneys derived from them, or any of them, and expended directly or indirectly in payment of the purchase money

of the said lots, or any of them, or for improvements or taxes thereon, or for expenses properly connected therewith, or for any or all of such purposes.

Answers were filed to these two cross-bills; and issues made; and proof has been taken at considerable length; and the various issues have been submitted to the court; and able briefs and arguments presented by the eminent counsel representing the various parties.

The first important question which seems to arise is that raised by the original bill of the trustee in bankruptcy, as to the validity of the deed of trust to the defendants Hamilton and Williamson, securing the Catholic University.

Unless the trustees, Waggaman and Ridout, had authority to deal with the said tract of land as they might see fit, it cannot be seriously contended that they could mortgage the same to secure a personal indebtedness of either of the said trustees.

87 It has been argued generally that a power to sell and convey necessarily includes a power to mortgage, and only on that general principle could this deed of trust be sustained as against the other equitable owners of the said tract. If Waggaman and Ridout had equitable interests in the said tract, the said deed of trust would estop them from claiming the same as against the trustees and beneficiaries named therein. So that even if the said deed of trust was invalid as to the other equitable owners, it would be valid as to Thomas E. Waggaman, and therefore the question of preference must necessarily be determined.

Section 60 of the Bankrupt Law of July 1, 1898, as amended by the act of February 5, 1903, provides that a person shall be deemed to have given a preference, if, being insolvent, he has, within four months before the filing of the petition, made a transfer of any of his property, and the effect of such transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

It also provides that where such preference consists in a transfer, the period of four months shall not expire until four months after the date of record, if recording is required. It is admitted in argument that at the date of this deed of trust to secure the Catholic University, said Waggaman was a bankrupt within the meaning of the bankrupt law, that is to say, (paragraph 15 of Section 1 of said act) the aggregate of his property, exclusive of the property conveyed, would not, at a fair valuation, be sufficient in amount to pay his debts.

88 It is also admitted that if the Catholic University can maintain the validity of said deed of trust, it will receive a greater percentage of its debt than any other of the bankrupt's creditors of the same class.

Notwithstanding these admissions, it is strongly maintained by counsel, that there is no preference, because they say that the agents and officers of the said University did not have reasonable cause to believe that the said deed of trust was intended to give a preference.

The language of the bankrupt act, relating to this question, as amended, is as follows:—

(SECTION 60b.) "If a bankrupt shall have given a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person."

Thomas E. Waggaman was the Treasurer of the said University for many years, and the moneys which he attempted to secure by the said deed of trust were moneys that had been placed in his hands for investment long before the date of the said deed. They were invested by him, he placing the same to his personal credit in The National Metropolitan Bank, where he kept his individual bank account; and as a method of keeping a proper account thereof for the purpose of paying interest to the University, he had one of his clerks execute a note, called in these proceedings a "dummy" note and that note was kept in the files of his office, purporting to
89 be secured on certain deed of trust notes contained in a schedule, which in late years has been called schedule No. 1.

This method of investment, or this taking of the funds of the University and placing them to his own personal credit, and securing, or purporting to secure the same, by collateral notes, was known to the University through its auditing committees and officers for some time before the said deed of trust was executed.

For some reason the Board of Trustees of the University determined that no further investments should be made by him, and appointed a finance committee to make the investments. An investigation of his affairs to some extent was ordered by the Board, and counsel were employed to see what the security was back of or securing the "dummy" notes representing the \$876,168.96. This investigation, made in the summer of 1904, revealed the fact that some of the deeds of trust purporting to secure this sum had been released, and some were second and third encumbrances, instead of first encumbrances, on the various pieces of property; and that the valuation of a number of the pieces, so far as investigated, did not afford any security to the University.

It appears also that before this investigation, said Thomas E. Waggaman had made and delivered a bill of sale of his art gallery to the University, which it is claimed was given for additional security.

Counsel, feeling assured by the investigations made, that the funds of the University were not properly secured, demanded of said Waggaman further security; and after considerable correspond-
90 ence, and hesitancy on the part of said Waggaman, and urgent demands on the part of the University, it was finally agreed that the deed of trust in question should be executed.

There being a question as to whether or not Waggaman and Ridout, trustees, had authority to execute the said deed, and thereby convey the interest of the other equitable owners, a consent was prepared, which Waggaman undertook to have signed, whereby they would ratify his act in executing the said deed of trust.

This deed of trust was finally executed on July 25, 1904, in pursuance of an agreement made and reduced to writing on July 13,

1904, and under the terms of which the said deed of trust was not to be recorded for ninety days, unless certain contingencies arose.

On August 22, 1904, counsel for the University was notified that certain banks were contemplating filing a petition in bankruptcy against said Waggaman; and on receipt of that information the deed was that day recorded; and the bankruptcy petition was filed on the next day.

It is argued by counsel for the trustee, that this written agreement to execute said deed of trust and to keep the same off the record, discloses sufficient facts, in connection with the correspondence leading up to it and the other facts then admitted to have been known by the University, to give that institution reasonable cause to believe that the said deed of trust was intended to give a preference to the University.

91 It is argued that the reputation of said Waggaman for wealth, as well as for character, at that time was such that the University had no reasonable cause, from the other facts known to believe that he was insolvent, or that he intended a preference; and that the question of reasonable cause for belief must be decided in view of all the facts and circumstances known at that time, and not in view of the facts learned since, which clearly show the bankruptcy then existing.

The University, through its officers, felt very strongly that it was without security for its debt. It knew its trusted had taken its funds as his own, and thereby became its debtor; and while it may have believed that Waggaman was still solvent, it must have known that he was helpless so far as being able to raise money sufficient to pay their claim; and it must have known that there were other creditors in large amounts, who had no better security than they had; and that a valid deed of trust on Woodley would give them better security than the other creditors. They may have believed that Waggaman was solvent, and that they were only obtaining a security to which they were properly entitled, in demanding and accepting the said deed of trust.

The question, however, is not one of belief of solvency, but one of reasonable cause for belief of insolvency; and viewing all the circumstances which have been detailed in evidence, and commented upon in argument, and after considering the authorities cited, I am forced to the conclusion that the agents of the University had reasonable cause to believe, at and before the time of its execution, that the said deed of trust was intended to give a preference; and

92 that therefore the same must be set aside as a preferential transfer.

The next important question which arises is, had the trustees, Waggaman and Ridout, authority, under the terms of the said deed in trust to them, to execute the Riggs trusts, and borrow the money for the purposes for which the same was borrowed?

There is no express statement of authority in the deed itself, which authorizes the trustees to mortgage any of the said property, the title to which is placed in their names. There are some expressions in the deed which it is claimed by counsel fairly authorize

the making of mortgages for the purpose of raising money necessary to develop and protect the said tract of ground.

One expression is that they were authorized to sell and convey the same, or any part thereof, in fee simple, or for any less estate; and it is claimed that this should be construed to give authority to execute a deed of trust securing money for needed purposes under the other trusts expressed in the deed, which were that they were to make subdivisions of the tract in their discretion, or to sell it as an entirety, or to preserve it in the condition it was then in, as they might deem best.

It is argued that these words made the trustees managers of the property, so to speak, and placed it in their control, so that they could subdivide, grade, improve, and develop the property, and put it upon the market in the best manner for all concerned; and that if there was no express power in the deed to execute a mortgage, the

93 implied power must necessarily exist where they were given express power to do something that they could not do in any other way than by executing mortgages and borrowing money.

Whoever dealt with the property, either as purchaser or otherwise, was expressly relieved from seeing to the application of any money which the said trustees might receive; and it is argued from this that there was no duty on the part of any person proposing to loan money to the trustees to inquire into its application; and this would be true, if they had the absolute power to mortgage the property in their discretion. Any person loaning money, however, was charged with notice that they were trustees, and that they were acting for other parties who had the equitable interest and title to the said ground; and although the deed may have excused them from seeing to the application of the purchase money, or other money paid said trustees, being put on notice that they were trustees, they were bound to inquire as to their powers, in case the deed in trust did not clearly define the same; and it is argued by counsel for the equitable owners, and the Plain estate secured on the equitable title to an undivided portion of said tract, that taking the whole deed together, no one could fairly reach the conclusion from all its terms, that it gave power, either expressly, or by necessary implications, to the trustees to execute the Riggs Trusts; and one expression that they rely upon to indicate that the said trustees were to sell the property and not to encumber it, is the provision that the trustees may make the sales authorized by the deed, either at public or private sale, in their discretion. Mortgages are not so made.

94 The argument is that taking these words in connection with the other express words of the trust, and the circumstances surrounding it, that the grantor, or the beneficial owners of the property, never intended the said trustees to have the power to encumber the property by deeds of trust, at their will, because such power is wholly inconsistent with the scheme of disposing of the estate, and making division of the profits among the owners.

Counsel representing the Riggs trusts insist that the power to sell necessarily includes the power to mortgage, because a mortgage is a

species of sale or a conditional sale. That the form of mortgage in vogue in this District is the deed of trust, by which title is conveyed to trustees with power to sell, and make conveyance in fee, in case of default in payment of the money secured; and that at any rate the deed of trust is one species of conveyance by which a less estate than a fee is conveyed, or a conditional estate is conveyed, which may in the end operate as an out and out sale of the fee.

This argument is supported by several authorities.

In this District, there are a number of cases wherein by the co-operation of the Probate Court and the Court of Chancery, before the adoption of the Code, the real estate of an infant was diminished by either mortgaging or selling, the act of Maryland, then in force here, providing that the real estate of an infant could not be diminished for the support of the infant, except by an order of the Orphan's Court approved by the Court of Chancery; and it is argued

95 that the power to diminish an infant's estate could mean nothing more than the power to sell; and that such power to sell included the power to mortgage; and that such construction had been followed and approved in so many cases, and for such a length of time, that it had become a rule of property.

In the case of *Middleton v. Parke*, 3 Appeals D. C., 149, the court said:

"The general rule is elementary law, that the power to sell includes the power to mortgage, because a mortgage is a sale, although a sale upon condition. But there are cases where a different rule apparently has been held. In all such cases, either by express terms or by necessary implication, the power of sale is limited, and its scope defined. Wherever there is such a limitation it must of course govern and control the action of parties."

Another case relied upon by counsel is the *Williamette Manufacturing Company v. Bank of British Columbia*, 119 U. S. 191.

In my reading of that case, however, I am unable to see that it helps the argument any with reference to the construction of this deed in trust. That was with reference to the power of a corporation over its own assets and franchises under its charter, in which the language used was broad enough to give it the right to dispose of its property at pleasure; and it can not be denied that a party who has all the title in property, and can dispose of it at will, may make such disposition by sale or mortgage as he may choose.

In the present case the trustees are not the owners of the property, and are to have no other powers except those expressly stated, or necessarily implied; and parties dealing with them are notified that they are trustees, and that the beneficial owners are
96 three unknown parties, whose shares are defined by a certain agreement in writing, a copy of which is lodged with each of said trustees.

The language is, that the said trustees hold in trust, "for the uses and purposes following and none other" and the deed then proceeds to state what the trusts are, thus showing that the powers were intended to be only those expressed.

The decisions of the English courts are referred to at some length

in the brief of counsel, and the general rule established by the decisions seems to be fairly stated in a quotation made from Sugden on Powers, as follows:

"SECTION 5. Generally speaking, a power of sale out and out for a purpose, or with an object beyond the raising of a particular charge, does not authorize a mortgage; but where it is for raising a particular charge, and the estate itself is settled or devised subject to that charge, then it may be proper under the circumstances to raise the money by mortgage, and the court will support it as a conditional sale."

Another quotation from the brief is from Hill on Trustees, 742, as follows:

"A power for trustees to sell will authorize a mortgage by them, which is a conditional sale, wherever the objects of the trust will be answered by a mortgage, as for instance, where the trust is to pay debts or raise portions; but where the trusts declared of the purchase money show that the settler contemplated an absolute conversion of the estate, a mortgage will be an improper execution of the power."

97 The Sands case has been urged as a persuasive authority where the right to mortgage has been sustained by two of the Justices of this Court. In that case, however, Mr. Sands was given express discretionary control of the estate as manager, and if moneys were required for the estate, or the children of the testatrix, he was authorized to sell, and to re-invest any surplus. The express powers vested in him carried the implied power to mortgage; but can any such implied power fairly arise under the terms of the trusts in this case?

I have read Mr. Edmonston's testimony carefully, and have great respect for his opinion on questions of title. He construes this deed in trust on the general principle, that a power to sell necessarily includes a power to mortgage. He does not seem to have considered anything outside the deed itself; but it may be that he, knowing that Thomas E. Waggaman was one of the equitable owners, and no doubt the controlling owner, presumed the power to mortgage was understood and acquiesced in by the other parties interested in the property. This may or may not have influenced his judgment, but from the evidence it seems the natural view to be taken by him, as well as by Mr. Glover and Mr. Johnston, although they appear to have relied wholly on the Title Insurance Co. and the company seems to have relied wholly on the express terms of the deed itself.

98 They all recognized that the said trustees were borrowing the money ostensibly for the benefit of the trust estate, and it was so recited in each deed of trust. If the title company had not recognized that something more was required to authorize the trustees to mortgage the property then was expressed in the deed in trust, why were these recitals made? If the power to sell necessarily included the power to mortgage in this case, then the plain and ordinary deed of trust, without such recitals, would have been sufficient.

As to the contention that the law as declared in this District,

touching this question, has become a rule of property, I am unable to give it my approval, for the reason that there is no rule that governs just such a deed as the one now under consideration. Every such deed in trust must be construed according to its own terms, and can not furnish any really valuable or certain rule for the construction of some other deed in trust differently worded.

I am unable to see from the authorities that there is any absolute rule that requires or authorizes the court to hold that the said deed in trust, considering all the words therein, but nothing aliunde, authorizes the execution of a mortgage or a deed of trust, at the will of said trustees.

It not being clear to me that such power exists under the express trusts stated in the deed, I have examined the written agreement between the owners, which is referred to in the deed; and find nothing in that which adds to the powers of the trustees.

On the contrary, there are some expressions in the said agreement that would seem to limit their powers as to the management
99 of the said property, and as to the payment of encumbrances on the property at the date of the execution of said deed in trust.

The agreement provides that Thomas E. Waggaman and John F. Waggaman should have the exclusive management of the said property in respect to the improvement thereof, until the same should be completed in a certain manner; and it also provides that if either of the parties should make default in the payment of his share of the encumbrances, taxes or cost of improvements, when called upon by said trustees to make such payment, the share of such party in default may be paid by any other party, and the amount shall bear interest at ten per cent per annum; and of the party in default neglect to repay the same within ninety days after payment by said trustees, the trustees are authorized to make private — of his interest for the best price obtainable without further notice. This indicates that the trustees were to call upon the owners for money needed to pay encumbrances, if not realized from sales. The said agreement also provides that at the end of five years, or sooner, if the encumbrances are paid, the trustees shall offer the remaining property for sale at public auction, and dispose of the proceeds, after paying costs and commission, and the balance of any encumbrance, by distributing the same among the said parties according to their respective interests.

It also provides that either party may sell or pledge his interest at any time, by filing a written assignment and copy of contract with the trustees and the other part-owners, but no such
100 pledge or sale shall in anywise interfere with the stipulations of said agreement, management of said property, or powers and duties of said trustees as set forth in the said deed in trust.

The said written agreement is signed by the three brothers, Thomas E. Waggaman, John F. Waggaman, and Henry P. Waggaman.

I can not find any power to mortgage in the express trusts stated in the deed, or in anything stated in the collateral agreement re-

ferred to therein. Neither can I find any duties expressly imposed upon the trustees, which necessarily give them an implied authority to mortgage the property. Neither the deed or the agreement imposes upon them any duty of grading or making improvements, or paying encumbrances, unless they receive money from sales, or from the owners.

Notwithstanding this want of express or implied authority to encumber the property for any purpose I am disposed to hold that the facts and circumstances of this case show that the money borrowed under the Riggs trusts was money used, for the most part, in the interest of the equitable owners, and for the benefit of the trust estate; and that from the evidence they must have known that fact and acquiesced in it, and that in equity and good conscience they ought not to profit by such moneys until the holders of the notes secured by the Riggs trusts, who loaned their money in good faith, have been repaid, so far as their moneys were used for the benefit of the said property, directly or indirectly; and that therefore the

101 complainants in the said cross-bill are entitled to a lien against the property, superior to that of the trustee in bankruptcy, or general creditors of Thomas E. Waggaman, and superior to the claims and rights of the Plain estate, John F. Waggaman, or any other party interested in the equitable title to the said ground.

It is contended that the purchasers of this tract were partners; and that the Riggs trusts were made by partners, and in the interest of the partnership business *business*; and that therefore no partner has any right to any share in the property until all the firm debts are paid, including those secured by the Riggs trusts.

I think, however, this contention can not be maintained under the authorities. The venture, or speculation, gives the parties more nearly the status of tenants in common, but qualified by their said written agreement.

The said trustees were such tenants in common, and whether they could convey the title of their co-tenants or not, they are estopped from denying that they could and did convey their own title.

The Plain estate, it seems to me, can have no better title to the real estate in question, under the terms of the collateral agreement, than could the tenants in common from whom Plain purchased. The rights of said estate are those of a mortgagee in equity, secured upon the undivided interest which Plain sold to Henry P. Waggaman. If the purchase money was not paid, he had his vendor's lien, or contract lien, and could have foreclosed, and sold the five-sixteenths interest on which he was secured.

102 The purchaser at such foreclosure sale would have taken subject to the said agreement between the three brothers, for no sale could have been made otherwise. It therefore seems clear that Plain could have no greater right against his co-owners, as mortgagee, than he had as grantee, and all his rights are subject to the said deed in trust and the collateral agreement. He had Thomas E. Waggaman's personal liability, however, as endorser on Henry P. Waggaman's notes.

In as much as it is not clear just what moneys out of those borrowed by the said trustees on the said Riggs trusts were used for the benefit of the said trust property the decree should make provision for ascertainment by reference to the auditor, or otherwise.

The deeds of trust which were inadvertently or fraudulently released, as described in Equity suits Nos. 24,921 and 24,927, should be reinstated, or the interests of the bona fide holders of unpaid notes secured thereby, should be protected by declaring their right to a lien on the said property, subject to such lien as the parties interested under the Riggs trusts shall be entitled to, or their interests should be reserved by the decree.

If in the multitude of parties, and questions contained in this record, there are other parties who are entitled to affirmative relief at this time, their claims should be provided for in the decree, or their rights reserved for future determination and decree.

JOB BARNARD, *Justice*.

103

Stipulation.

Filed Aug. 24, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 25649.

HENRY ROZIER DULANY, Trustee in Bankruptcy of Thomas E. Waggaman,
vs.

THOMAS E. WAGGAMAN et al.

It is hereby stipulated by and between the undersigned parties to the above entitled cause, as follows:

1. That Henry Rozier Dulany, Trustee as aforesaid be authorized to purchase the promissory notes known as the Plain notes, aggregating with interest about \$160,000.00, said notes having been endorsed by Thomas E. Waggaman and proved as a claim against his estate, for the sum of \$117,000.00, \$80,000.00 of the said sum to be paid to the defendants Sue Plain, Charlotte B. Munn and Susie B. Martin, or their solicitor, and \$37,000.00 to the Washington Loan & Trust Company, or to their solicitors of record; and that, for the purpose of making the purchase of the said notes, the said Dulany shall be authorized to use \$50,000.00 of the proceeds of the Art Gallery sales, \$50,000.00 from the proceeds of sale of Block 15, Woodley Park, said Block not being included in Riggs trusts, and the residue of the said payment from the general funds in his hands as trustee to the credit of the general fund.

104 2. That the validity of the Riggs trusts shall be conceded, and established by a consent decree; but that, as to the so-called Weimer fund, of about \$18,000.00 and the interest thereon, the proceeds of Woodley belonging to the interests other than those of John F. Waggaman shall first be applied to the payment thereof, but nothing in this agreement shall be taken to preclude proof by the trustee, should he be able to adduce the same, that the said Weimer item is a proper charge against all the inter-

ests in Woodley, including the interest of John F. Waggaman, and a decree to that effect if so proven to the satisfaction of the court.

3. Nothing in this agreement shall be taken as a concession or admission that, as between John F. Waggaman and Thomas E. Waggaman, any part of the Riggs trusts are a proper charge against Woodley, or the interests of John F. Waggaman therein, or as a concession or admission as between any of the parties hereto of any personal indebtedness of John F. Waggaman to Thomas E. Waggaman.

4. The deed of trust from Thomas E. Waggaman and John Ridout, Trustees, to George E. Hamilton and Irving Williamson, Trustees, shall not be further insisted upon as a valid lien upon the interest of John F. Waggaman or Alice V. Waggaman in Woodley or its proceeds, but this concession by or on behalf of the Catholic University shall not be taken or considered as a waiver by it of any of its rights under said deed of trust against the other equitable owners of said Woodley or the Trustee in Bankruptcy of the estate of Thomas E. Waggaman, nor shall it in any way be taken or con-

105 sidered as a waiver of its right to appeal from any decree entered, or to be entered, in this cause affecting its lien or claim under said deed of trust against any or all of the other equitable owners of said Woodley or the said Trustee in Bankruptcy; nor shall said concession be made the basis of objection to its participation as a general creditor in the assets of the bankrupt Thomas E. Waggaman.

5. After the payment of the Plain notes, to be purchased by the trustee as above provided, out of the proceeds of Woodley distributable to the 5/16 interest therein assigned by the late Benjamin K. Plain to H. P. Waggaman the balance of said proceeds shall be applied to the payment of the \$40,000.00 promissory note of the said H. P. Waggaman to the said Benjamin K. Plain and now held by the Catholic University, and if said balance shall prove insufficient to pay said note in full with interest, then the balance due on said note shall be paid out of the proceeds of the remaining 3/16 interest assigned by H. P. Waggaman to said Plain as additional security for said notes, subject only to any prior rights or equities of any parties to this cause other than the Trustee in Bankruptcy.

6. None of the parties hereto shall be chargeable with any allowance by the court for counsel fees except to the extent that such allowance as the court shall make out of the proceeds of Woodley coming into the hands of the trustee for the benefit of the creditors of Thomas E. Waggaman may reduce the distributive share of these creditors.

7. The Plain notes so to be purchased by the trustee Dulany as above provided shall be held by him in the place and stead
106 of the moneys used by him in the purchase thereof to the extent that such moneys are so used and interest on amounts so used at 5% and subject to the same rights of the parties to this cause therein as they possess in the moneys so to be used in the said purchase.

8. If the proceeds of Woodley applicable to the payment of the Plain notes should not yield sufficient to repay the entire cost thereof

to the trustee, as above provided, then so much of the money used to purchase the same as shall be adjudged to have been the interest or share of John F. Waggaman in said money shall be first paid to him before the estate of the bankrupt shall participate in the fund realized from the payment of the said Plain notes.

9. The receivers shall be authorized to pay interest on the notes secured by the Riggs trusts as it matures and the principal of the said notes from the proceeds of sales of Woodley property on which any of the same are secured, and the receivers shall have reasonable time within which to make sales of said property and complete payments of said notes.

THOMPSON & LASKEY,

Attorneys for Ellen C. Daingerfeld.

WM. E. AMBROSE,

Sol'r for C. H. Merrilat, Trustee in B'k'cy of Jno. Ridout.

OSCAR LUCKETT,

Sol'r for Estate of Alfred D. Jessup.

HENRY H. GLASSIE,

Sol'r for Samuel Waggaman & Mary T. Waggaman.

WM. HENRY DENNIS,

Sol'r for Executor of Mary Harvey, Dec'd.

MILLAN & SMITH,

Sol'rs for Christine Waggaman, Widow

of Thomas E. Waggaman.

ARTHUR PETER,

Att'y for Jno. F. Waggaman and Alice V. Waggaman.

W. G. JOHNSON,

Solicitor for Sue Plain, Charlotte Plain

Munn, & Susie B. Martin.

HAMILTON, COLBERT, YERKES &

HAMILTON,

For the Catholic University of America &

Catherine M. Humphreys.

107

J. J. DARLINGTON,

For the Washington Loan & Trust Co. & of

Counsel for H. Rozier Dulany, Trustee.

MADDOX & GATLEY,

Attorneys for H. Rozier Dulany, Trustee

of Thomas E. Waggaman.

R. ROSS PERRY AND SON,

For Holders of Notes Secured by Riggs

Trusts as per Record.

WALTER C. ENGLISH,

Solicitor for John W. Brawner, Trustee; Henry

E. Waggaman, Trustee; John W. Brawner,

Henry E. Waggaman, John F. Waggaman,

Alice V. Waggaman, Viola R. Waggaman,

Floyd P. Waggaman, Thomas Ennals Wagga-

man, Frances E. Waggaman, Thomas E.

Waggaman, Guardian ad Litem for Thomas E.

Waggaman, Jr.; Mattie W. Brawner.

JOHN RIDOUT,

For Himself and in His Own Right and

for Frances E. Ridout.

It is further stipulated and agreed that the purpose and intent of all the provisions of the foregoing stipulation are that the deeds of trust known as the Riggs Trust and described in paragraphs 34 to 39, both inclusive, of the original bill and the indebtedness thereby secured shall be a legal first lien upon all the real estate purporting to be conveyed thereby and upon all the proceeds of the sales heretofore made or to be hereafter made of any part thereof, which said indebtedness shall be first paid in full before any part of the proceeds of sale of any of the said real estate described in said Riggs Trusts shall be applied to any of the other provisions of said stipulation. Any and every provision of the said stipulation, if any, apparently in conflict with said purpose and intent, shall be interpreted as applicable only to the rights inter se of other parties than the holders of the notes secured by the said Riggs Trusts, and to interfere in no way with the application of the net proceeds of all sales of the real estate covered by the said Riggs Trusts to the payment of the indebtedness
 108 thereby secured until all of the said indebtedness has been fully paid. The said stipulation and this addition thereto are simultaneously executed and shall be read as one instrument. The question of costs as to any and every party is not dealt with by this stipulation.

THOMPSON & LASKEY,

Att'ys for Ellen C. Daingerfield.

HAMILTON, COLBERT, YERKES &
HAMILTON,

For the Catholic University of America &

Catherine M. Humphreys.

WILLIAM E. AMBROSE,

Solicitor for Charles H. Merrilat,

Trustee in B'k'cy of John Ridout.

OSCAR LUCKETT,

Solicitor for Estate of A. D. Jessup.

HENRY G. GLASSIE,

Sol'r for Samuel Waggaman & Mary T. Waggaman.

WALTER C. ENGLISH,

Att'y for John F. Waggaman and Alice V. Waggaman.

JOHN F. WAGGAMAN,

By JOHN W. BRAWNER,

Attorney in Fact.

ARTHUR PETER,

Att'y for J. F. Waggaman,

By JOHN W. BRAWNER.

W. G. JOHNSON,

Solicitor for Sue Plain, Charlotte Plain

Munn, & Susie B. Plain Martin.

MADDOX AND GATLEY,

Attorneys for H. Rozier Dulany, Trustee.

J. J. DARLINGTON,

For the Washington Loan & Trust Co., & of

Counsel for H. Rozier Dulany, Trustee.

R. ROSS PERRY AND SON,

Att'ys for Holders of Notes Secured by Riggs

Trusts as per Record.

MILLAN & SMITH,

*Sol'rs for Christine Waggaman,**Widow of Thomas E. Waggaman.*

WALTER C. ENGLISH,

Solicitor for John W. Brawner, Trustee; Henry E. Waggaman, Trustee; John W. Brawner, Henry E. Waggaman, John F. Waggaman, Alice V. Waggaman, Viola R. Waggaman, Floyd P. Waggaman, Thomas Ennals Waggaman, Frances F. Waggaman, Thomas E. Waggaman, Guardian ad Litem for Thomas E. Waggaman, Jr.; Mattie W. Brawner.

WM. HENRY DENNIS.

Sol'r for Executor of Mary Harvey, Dec'd.

109

JOHN RIDOUT,

*For Himself as Trustee and in His Own**Right and for Frances E. Ridout.**Final Decree.*

Filed Oct. 26, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 25649.

H. ROZIER DULANY, Trustee in Bankruptcy, &c.,

vs.

THOMAS E. WAGGAMAN et al.

This cause coming on to be heard on the original bill the exhibits filed therewith, the answers to said bill and the testimony taken in support thereof, the same was argued by counsel for the respective parties and submitted to the Court. It is thereupon, after due consideration, by this court and the authority thereof, this 26th day of October, A. D. 1909, adjudged ordered and decreed that the deed of trust, dated July 25, 1904 from Thomas E. Waggaman and John Ridout to George E. Hamilton and Irving Williamson, conveying certain property fully described in said bill and known as Woodley Park, to secure certain notes held by the Catholic University of America, aggregating \$876,168.96 fully set forth in said deed of trust, which said deed of trust, is recorded amongst the Land Records of the District of Columbia, in Liber 2842 at folio 13 et sequitur, be, and the same is hereby declared to be a preference within the meaning of the Bankruptcy Laws in force in the said District, and it is thereupon further adjudged, ordered and decreed that said deed of trust be, and the same is hereby, vacated, set aside and held of no force and effect as against the rights and interests of the complainant herein in and to the property by said deed of trust conveyed, and that the complainant recover of and from

110

the defendant the Catholic University of America his costs of suit, properly taxable against said University to be taxed by the Clerk, for which execution shall issue as at law.

And it appearing to the Court that the parties to this cause have entered into a certain stipulation filed in the cause on the 24th day of August, 1909, and upon consideration thereof, and it appearing to the Court from the report of the Receivers filed in this cause on the 16th day of October, 1909, that they have advanced the sum of Fifty thousand dollars (\$50,000) out of the proceeds of lands heretofore sold by them, said lands being part and parcel of the lands conveyed by the said deed of trust, towards the purchase of what are called in these proceedings the "Plain notes," as in said stipulation provided, it is further adjudged, ordered and decreed as follows:

First. That said advance so made by said Receivers be, and the same is hereby ratified and confirmed:

Second. That the several deeds of trust and every of them known in this cause as the "Riggs Trusts" and designated and described in paragraphs numbered from thirty-four to thirty-nine, both inclusive, of the original bill, are in all respects valid and operative according to their tenor and that the indebtedness thereby secured shall stand and be a valid and enforceable first lien upon all of the real estate by the said deeds of trust conveyed and upon all the proceeds of all sales thereof either heretofore made or hereafter to be made to the extent of the unpaid portion of the principal and interest of the indebtedness in the said several deeds of trusts

111 mentioned, paramount to the claims of all the parties to the said stipulation against the said real estate or any of the proceeds of sale thereof, which said indebtedness in the said deeds of trusts mentioned and all interest thereon shall be paid in full from the net proceeds of all sales made or to be made of said real estate in said deeds of trust described before any part of the said proceeds shall be applied to any of the other provisions of the said stipulation or to the use or benefit of any other parties to said stipulation, provided, nevertheless, that nothing herein contained shall prevent or preclude the defendant Christine Waggaman from claiming dower in all or any part of the real estate covered by said deeds of trust, to the extent that such claim, if any, may be established in this cause, payable out of the balance arising from the sales of said real estate and remaining in the hands of the Receivers next after the payment in full of the indebtedness secured by the said deeds of trust next hereinbefore mentioned and known as the "Riggs Trusts";

Third. That the Receivers in this cause are hereby authorized and directed to pay accrued interest on the notes secured by the Riggs Trusts and future interest on same as it accrues, and also to pay the principal of the said notes, from the proceeds of sales of Woodley property on which any of the same are secured and out of the first available funds in their hands and from time to time as such funds become available, the Receivers to have reasonable time within which to make sales of said property and full payment of said notes.

112 Fourth. And it is hereby further decreed that this cause be and it hereby is retained for such further proceedings upon the foot of this decree, in respect of the claims mentioned in

paragraph 40 in the Bill of Complaint in this cause, and of any other matters not herein adjudicated, as may be lawful and to the court may seem meet and proper.

By the Court:

JOB BARNARD,
Asso. Justice.

From so much of said decree as declares the Deed of Trust dated July 25, 1904, to Thomas E. Waggaman and John Ridout, to secure the Catholic University of America in the sum of \$876,168.96 void as a preference under the Bankruptcy Law, the defendant The Catholic University of America appeals in open Court, which appeal is allowed and the penalty of the bond on appeal to act on a super-sedeas is fixed at Ten thousand Dollars.

JOB BARNARD, *Justice.*

Decree Amending Decree of October 25, 1909, and Appeals Noted.

Filed Nov. 1, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 25649.

H. ROZIER DULANY, Trustee in Bankruptcy,
vs.
THOMAS E. WAGGAMAN et al.

113 Upon consideration of the petitions to vacate or amend the decree herein of October 26th, 1909 and of the reservations in said decree it is this 1st day of November 1909, adjudged, ordered and decreed that the said decree be amended by adding thereto the following:

That the deed of trust from Thomas E. Waggaman and John Ridout, trustee-, dated July 25th, 1904, and heretofore more particularly described, be, and the same is hereby declared null, void and of no force or effect as against the rights and interests of John F. Waggaman and Alice V. Waggaman and Samuel Waggaman and Mary T. Waggaman and of either of them in and to the property purported by said deed of trust to be conveyed.

And that the fourth, being the last paragraph of said decree be and the same is hereby amended to read as follows:

Fourth. And it is hereby further decreed that this cause be and it is hereby retained for such further proceedings upon the foot of this decree in respect of the claims mentioned in paragraph forty in the bill of complaint in this cause and embraced in said stipulation and of any other matters not herein adjudicated as may be lawful and to the Court may seem meet and proper.

JOB BARNARD, *Justice.*

From so much of the decree passed herein on the 26th day of October A. D., 1909 as amended by decree of November 1st, 1909 as declares the Deed of Trust dated July 25th 1904 to Thomas E. Waggaman and John Ridout to secure the Catholic University of

114 America in the sum of \$876,168.96 void as a preference under the Bankruptcy law, the defendant the Catholic University of America appeals in open court, which appeal is allowed and the penalty of the bond on appeal to act as a supersedeas is fixed at ten thousand dollars.

JOB BARNARD, *Justice.*

From so much of the decree passed herein on the 26th day of October, A. D. 1909, as amended by the decree of November 1st, 1909, which adjudicates that nothing therein contained shall prevent or preclude the defendant, Christine Waggaman, from claiming dower in all or any part of the real estate covered by such deeds of trust to the extent that such claim, if any may be established in this cause, payable out of the balance arising from the sales of said real estate and remaining in the hands of the Receivers next after the payment in full of the indebtedness secured by the said deeds of trust next hereinbefore mentioned, and known as the Riggs trusts, and also from that part of the decree which in adjudicating that the Receivers are thereby authorized and directed to pay accrued interest on the notes secured by the Riggs trusts and future interest on the same as it accrues, and also to pay the principal of the said notes from the proceeds of sale of Woodley, on which any of the same are secured, and out of the first available funds in their hands does not decree in accordance with the stipulation of August 24, 1909, that

115 in respect to the so-called Wimer fund of about \$18,000 and interest thereon constituting a part of the Riggs trusts, referred to in said decree, the proceeds of Woodley belonging to the interests of other than John F. Waggaman, shall first be applied to the payment of said Wimer fund, and further from the omission of said decree to provide in accordance with the said stipulation that nothing therein shall be taken as an adjudication between John F. Waggaman and Thomas E. Waggaman, that any part of the said Riggs trusts is a proper charge against Woodley or upon the interests of John F. Waggaman, or of any personal indebtedness of John F. Waggaman to Thomas E. Waggaman, the defendant, John F. Waggaman, appeals in open court, which appeal is allowed and the penalty of the bond on appeal not to act as a supersedeas is fixed at One Hundred dollars.

JOB BARNARD, *Justice.*

Order of Severance.

Filed Nov. 16, 1909.

In the Supreme Court of the District of Columbia.

In Eq. No. 25649.

H. ROZIER DULANY, etc.,

vs.

THOMAS E. WAGGAMAN et al.

On consideration of the motion of the defendant, John F. Wagga-
 man asking for a severance from the other defendants in the
 116 above entitled cause on the appeal heretofore noted by him
 herein, and it appearing that the proper proceedings have
 been taken upon said motion it is this 16th day of November, A. D.
 1909, ordered that the defendant John F. Waggaman be and he is
 hereby granted a severance from the other defendants on his appeal
 from the decree entered in this cause on the 26th day of October,
 1909, as amended on the 1st day of November, 1909, and he is
 hereby granted leave to prosecute his said appeal to the Court of
 Appeals alone.

JOB BARNARD, *Justice.**Memorandum.*

November 16, 1909.—Appeal bond approved and filed.

Directions to Clerk for Preparation of Transcript of Record.

Filed Dec. 16, 1909.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

In Equity. No. 25649.

H. ROZIER DULANY, Trustee in Bankruptcy,

vs.

THOMAS E. WAGGAMAN et al.

The defendant, John F. Waggaman, who has appealed
 117 from the decree of the Court in the above entitled cause
 dated Oct. 26, 1909, as amended by the decree dated Nov. 1,
 1909, notifies the Clerk of the Supreme Court of the District of Co-
 lumbia, that he hereby designates the following parts of the record
 in the above-entitled cause, as those which he desires to be included
 in the transcript as sufficient for the determination of the questions
 to be presented upon his said appeal:

1st. Original bill without exhibits, filed by the said H. Rozier
 Dulany, Trustee, on Aug. 22, 1905.

2nd. Answer of defendant Christine Waggaman to said original bill filed Oct. 3, 1905.

3rd. Answer of defendants John F. Waggaman and Alice V. Waggaman, to said original bill, filed Jan. 31, 1906.

4th. Joint answer of Arthur T. Brice, et al., filed by R. Ross Perry & Son, April 17, 1906.

5th. Replication to answers to original bill filed May 1, 1906.

6th. Opinion of the Court filed June 2, 1909.

7th. Stipulation of parties settling above entitled suit filed August 24, 1909.

8th. Decree of court filed Oct. 26, 1909.

9th. Decree amending decree of court filed Nov. 1, 1909.

10th. Appeal of John F. Waggaman taken Nov. 1, 1909, from decree as amended.

11th. Order of severance permitting said John F. Waggaman to separately appeal, filed Nov. 16, 1909.

118 12th. Appeal Bond—Mem.—Filed Nov. 16, 1909.

13th. A copy of this notice.

ARTHUR PETER,

Attorney for John F. Waggaman.

To John R. Young, Esq., Clerk of the Supreme Court of the District of Columbia.

Memorandum.

December 22, 1909.—Order extending time for filing record of John F. Waggaman in Court of Appeals, from time to time to and including May 15, 1910.

119 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 118, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 25,649 in Equity, wherein Henry Rozier Dulany, Trustee in Bankruptcy of Thomas E. Waggaman is Complainant and Thomas E. Waggaman and John Ridout, Trustees, et als., are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of May, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2171. John F. Waggaman, appellant, vs. Henry Rozier Dulany, trustee, &c. Court of Appeals, District of Columbia. Filed May 13, 1910. Henry W. Hodges, clerk.